



Parent Support Services
Society of BC

GRANDPARENTS RAISING GRANDCHILDREN: A LEGAL GUIDE - REVISED 2014

The GRG Legal Guide was originally published in 2009. We have updated chapters of the Guide, to reflect new law and policy. 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.

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This chapter assists the grandparent (or kinship caregiver) in navigating the Ministry and delegated Aboriginal authorities. It covers the basics of child protection, the role of social workers, and issues of guardianship, restricted foster care and custody.

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Having a grandchild who is in trouble with the law can be a stressful and confusing experience. The best thing that you can do for your grandchild is to seek professional legal advice immediately. There are many resources available in the community to help you, many of them free. This chapter provides a general overview of issues and resources relating to youth justice in British Columbia. You will also find brief responses to a few frequently asked questions.

Custody and Guardianship - Chapter 3

Many of the grandparents we spoke with expressed anxiety over not knowing what it meant to have custody or guardianship of their grandchildren. For many, no one ever explained to them what these words mean, or what rights and responsibilities come along with them. This chapter will explain some of the different legal relationships you can have with your grandchild. Later chapters have information about other arrangements, such as adoption and access or contact (the right of a child to visit with important people in his or her life).

Access and safety - Chapter 4

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).

Adoption - Chapter 5

Creating a stable home for their grandchildren is a priority for many grandparents. The most permanent way to do so is through adoption. Once the adoption is final, there is no legal difference between the rights you have as an adoptive parent and the rights you would have if you were the birth parent of that child. For that reason, this is the most legally secure relationship you can have with a child you are raising. However there are reasons why you may choose not to go this route. This chapter outlines the processes and challenges involved.

Child protection and the court process - Chapter 6

If the social worker, during a child protection response, finds that there are concerns over your grandchild's safety or well-being, you can try to make one of the agreements described in the preceding chapters. If you do not find out about the ministry's concerns early enough, or if you do not succeed in getting an agreement with the ministry, the social worker might decide one of two things:

- that your grandchild's care needs to be supervised by the ministry, or
- that your grandchild must be removed from the parental home.

If the social worker decides either of these things, your family will have to go to court. This chapter outlines this process. *(For information about finding a lawyer and other legal advice see Chapter 8 of this Guide – Getting Legal Help. Also check out Legal Services Society of BC <http://www.lss.bc.ca/>, or <http://www.clicklaw.bc.ca/>)*

Alternatives to court - Chapter 7

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. This chapter explores those alternatives.

Getting Legal Help - Chapter 8

Decisions you make about legal issues are very important, and a lawyer can help you understand your options and risks, as well as how your choices will affect your family. It is always a good idea to consult with a lawyer before making a major legal decision. Sometimes you can qualify for free help from a lawyer through legal aid. There are other people who may be able to help you through your legal matter, such as legal advocates.

Using the Courts - Chapter 9

Some grandparents get custody and guardianship of their grandchildren easily, with helpful advice and direction from family lawyers and legal advocates. Other grandparents have frustrating experiences, receiving little help or sympathy, and have to return to court many times before their issues are resolved. This chapter explains how the courts work and how you can prepare yourself. It also has a list of helpful resources.

Financial Assistance and Benefits - Chapter 10

If you are raising a grandchild or a relative's child, you may be entitled to government benefits. The amount of help you can get to pay for the child's needs depends on whether you have a custody or guardianship or adoption order. It will also depend on whether your grandchild has been diagnosed with special needs. This chapter will provide details on these benefits and links of where you might go for more information.

Arranging Your Affairs - Chapter 11

This chapter deals with documents you need to travel with your grandchild, and arranging affairs in case you become ill or die. Much of the legislation in this chapter has recently changed, and we are awaiting more updated information links that are helpful. Thank you to Lawyer Peter Bonny for his updates to this chapter.

Chapter 1

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Child protection and the ministry

This [chapter](#) will assist grandparents (or kinship caregivers) in navigating the Ministry and delegated Aboriginal authorities. It covers the basics of child protection, the role of social workers, and issues of guardianship, restricted foster care and custody.

Parents' responsibilities under the law

The law says that parents must do the following for their children:

- keep them safe,
- take care of their physical and emotional needs,
- get them medical care, and
- protect them from physical, emotional, and sexual abuse.

The law also says that a parent must not abandon or neglect his or her child.

British Columbia's law governing child welfare is the [Child, Family and Community Service Act \(CFCSA\)](#). The CFCSA requires anyone who has concerns about a child's safety to promptly report them to the Ministry of Children and Family Development or a delegated Aboriginal Child and Family Services agency.

What is neglect?

Neglect is failing to provide for a child's basic needs such as proper food, clothes, medical care, and a safe home.

Other examples of neglect include driving drunk with a child in the car, leaving a child with someone who is too drunk or drugged to take care of them, or letting a child use drugs or alcohol. Neglect can also include leaving a young child alone at home or in a car. The Canada Safety Council recommends that children under 10 years should not be left alone. This is also subject to the child's age, maturity, ability to access help, comfort levels and the amount of time the child is alone. Courts have concurred with this position.

What is abuse?

Child abuse can take the following forms:

- **Physical abuse** is a deliberate physical action that results in injury to a child. It includes unreasonable punishments, such as locking a child in a room without food, water, or a toilet for a long time.
- **Sexual abuse** is when a child is used or is likely to be used for the sexual gratification of another person. This includes sexual touching, sexual threats, making sexual photographs or videos of a child or making a child watch sexual acts.
- **Emotional abuse** is when an adult's behavior or words hurt a child. This includes ignoring, rejecting, criticizing, or yelling at a child.

A helpful resource - [Child Abuse Handbook: Responding to Child Welfare Concerns; Your Role in Knowing When and What to Report](#)

Sometimes children live in a home where they are not physically abused, but the people in the home hurt each other. This can make a child very afraid, and it can be emotional abuse. The CFCSA says that a child is emotionally harmed if they show severe anxiety, depression, withdrawal, or behavior that is self- destructive or aggressive

The Ministry and Aboriginal agencies have employees called social workers who assess complaints of child neglect or abuse to determine the most appropriate response. (Some Aboriginal communities have agencies, called delegated Aboriginal Agencies that work with Aboriginal families who may respond to reports of abuse.)

The ministry also has options in how it responds to child protection concerns. Depending on the circumstances, including the severity of the report, social workers can choose one of the following:

- **Family Development Response** is a way to keep kids safe with their families by conducting a thorough, time limited assessment of the family's and child's strengths and needs and providing support services to enable the family to care safely for the child. A family development response is used in less serious child protection situations and where the family is cooperative with ministry or delegated Aboriginal agency (DAA) involvement.

For more information re Family Development Response refer to http://www.mcf.gov.bc.ca/child_protection/pdf/Family_Development_Response.pdf

- **Youth Service Response** is a way for the ministry to support youth who need help through short-term services, such as youth-family mediation, mentoring, safe housing, and outreach services. Ministry workers may make referrals to those in need of

assistance and they also provide initial assessment and direct short-term supports to these youth.

If the youth are not reconnected to their family through short-term supports, the youth are further assessed for their need for longer-term service support while they receive *supports*.

If a longer-term service plan is developed to assist youth with family re-integration, they may continue to receive supports to further the plan. These supports could involve a youth-worker, possibly in conjunction with other child and family services, such as the “[Extended Family Program agreement](#)” or a “[Voluntary Care Agreement](#)”.

If the youth cannot return to the family and are assessed as eligible to enter a [Youth Agreement](#), a ministry or DAA social worker may provide direct supports under the CFCSA through entering into a written agreement with the youth. A Youth Agreement (YA) is a longer-term service plan that comprehensively supports a youth to make a successful transition to independence without bringing them into the care of the Director.

The Youth Service Response may also include referrals to community agencies.

The ministry’s responsibilities

The [Ministry of Children and Family Development’s](#) primary focus is to support vulnerable children and their families and promote healthy and safe environments where children are connected to their family and community.

MCFD has lead responsibility for responding to suspected child abuse and neglect. (In this guide, we refer to it as “the ministry,” though you might also hear it called MCFD.) If someone has reason to believe that your grandchild is being abused or neglected, that person is legally required to report those concerns to the ministry, who will assess the information and determine the most appropriate response to protect your grandchild.

The ministry’s general responsibilities include:

- Child safety, family support and children in care services
- adoption
- early childhood development and child care
- child and youth mental health services
- youth justice
- services for children and youth with special needs

The ministry’s three goals are:

- To make sure children and youth with special needs can and will achieve their full potential, participate in, and contribute to their communities.

- To make sure children and youth are healthy and safe in their families and communities.
- To provide a community-based service delivery system that is effectively supported and monitored.

Child protection: the basics

This section will explain the child protection process and what your options are if you want your grandchild to live with you. It will also explain how you can visit with a grandchild who has been placed in a foster home. It is important to keep in mind the following:

Get legal advice.

- If the ministry becomes involved in protecting your grandchild, you may [need the help of an advocate](#) to navigate the system, which can be intimidating and confusing. You may also need to [get a lawyer to provide legal advice](#). This information would give you the confidence you need to negotiate with the ministry social worker assigned to your case. Parent Support Services (PSS) Grandparents Raising Grandchildren (GRG) Support Line can also provide some advice. Call Toll Free 1-855-474-9777 or email grgline@parentsupportbc.ca. (See Chapters 6 and 8 for further information)

Connect with other grandparents.

- You can learn a great deal from other grandparents raising their grandchildren. They can tell you about services for children and youth – such as education, mental health services, or recreation – that are not provided by the ministry but instead through other community outlets. [Check out PSS GRG Support Circles and Support Line](#).

Cooperate with the parents.

- It is in the best interests of the children for grandparents and parents to cooperate with one another whenever possible. Not only does this result in more support and better communication for everyone, but in the case of a child protection investigation, the ministry may work exclusively with the parents, at least at first. For this reason, it is best to plan for your grandchild's care with the support and involvement of the parent.

Work cooperatively with the social worker.

- Ideally, the ministry social worker and the parents and/or grandparent work as a team to create a plan of care for the child at risk. A good idea is to be proactive and create a clear and well thought-out plan for your grandchild's care to present to the social worker. Parents and grandparents will always know more about the child than the social worker will – the parents and grandparents are the real experts in many ways, and they have a lot to contribute to the planning process.

If you have a poor history with the ministry, work to restore the relationship.

- Grandparents may have been involved with the ministry when they were parenting their own children. This past history may have a negative effect on everyone's efforts to make sure the grandchild's needs are met. It is important to show the ministry how you and your circumstances have changed. A good way to do so is to get letters from professionals who have witnessed your development, such as counselors or therapists. Remember, if the ministry is involved in your grandchild's life, having a good relationship with the social worker is in your grandchild's best interests.

If your grandchild is Aboriginal, keep him or her connected to the community.

- If your grandchild is Aboriginal, the child welfare law and policy in BC is designed to make sure Aboriginal grandchildren remain connected with their extended family, community, and culture if they are removed from the parental home. First Nations and Métis communities sometimes work with MCFD to provide varying levels of child welfare services for their own people in accordance with the [*Child Family and Community Service Act \(CFCSA\)*](#). [Contact your band office](#) to find out more about how the ministry works with your community. More information later in this chapter.

Your role as a grandparent

Usually, grandparents can tell their children are not coping well as parents. Grandparents describe this time as the “waiting, watching, worrying” phase. You can have a big role to play at this point in your grandchild's life, and the ministry is increasingly recognizing the importance of the grandparents' role.

One of the ministry's top priorities when finding a safe home for a child is to preserve family ties. If the child is Aboriginal, preserving the child's cultural identity is also really important. If a child is about to be removed from the parents' home, a social worker has to consider the least disruptive measures first. Sometimes this means a social worker will call family members, like grandparents, to ask if they can take care of the child.

We have heard from many grandparents that after they agree to take in their grandchild, the ministry offered no further support. If you need help, this should not happen. It is in the best interests of all children for them to receive the support they need to lead healthy lives and become full participants in society. If you need additional resources to meet your grandchild's needs, talk about this with your grandchild's social worker. For instance, if your grandchild needs counseling make sure to let your social worker know. Your social worker is there to support both your grandchild and you.

If you can tell that your grandchild's parents are not coping, here are some suggestions to make sure you are involved in the planning process for your grandchild's care, should the ministry become involved:

- **Whenever possible, stay in touch** with your grandchild, the parents, and your grandchild's social worker. The ministry has no obligation to contact grandparents when a child protection response begins, although they may do so to learn more about your grandchild's well-being. If you want to contact your grandchild's social worker, call the ministry office nearest you or ask an advocate for help.
- **Ask to attend meetings with the social worker.** If the parents agree, you can attend all meetings with the social worker. The social worker will want to involve significant people in the child's life when developing a plan of care for your grandchild, because the social worker is responsible for making a plan of care for your grandchild.
- **Learn how you can create a permanent home for your grandchild.** If it does not seem like the children will return to the parent, ask the social worker what your options are for the child to live with you, such as restricted foster care or an Extended Family Program agreement. (more info later in this chapter)
- **Get legal advice.** If possible, seek help from a lawyer or advocate when trying to reach an agreement with the ministry. They can tell you your options according to the facts of your situation. (See Chapter 8 for more details)

The law that governs child protection

In BC, the [*Child, Family and Community Service Act \(CFCSA\)*](#) is the law that governs the protection of children and youth in British Columbia. This act provides a legal mandate for ministry social workers, lawyers, and judges to help them make sure that children are safe. The CFCSA provides the following seven principles to guide anyone interpreting or administering services under the Act:

- Children are entitled to be protected from abuse, neglect, and harm or threat of harm.
- A family is the preferred environment for the care and upbringing of children and the responsibility for the protection of children rests primarily with the parents.
- If with available support services a family can provide a safe and nurturing environment for a child, support services should be provided.
- The child's views should be taken into account when decisions relating to the child are made.
- The cultural identity of Aboriginal children should be preserved.
- Decisions relating to children should be made and implemented in a timely manner.

Although these principles are a good starting place for making decisions about children's lives, the law says a child's safety and well-being must remain the number one priority when there is a concern about their care. This means that, although it is important to try to keep children with

their families for example, the court can take them away from their parents if there is a risk that they would be neglected or harmed if they were to stay at home.

The law that governs child protection says that the court must consider children's best interests in the following situations:

- at the protection hearing
- before making a continuing custody order
- when deciding whether to grant parents access to children who are in the temporary custody of the ministry (these orders are usually granted unless the court is satisfied that access is not in the children's best interests).

The best interests of the child

The law requires that courts and social workers place **the best interests of the child** above every other consideration whenever they have to resolve a dispute involving a child. In the past, the law treated children as the property of their birth parents, but now the focus is on what is best for the child. This means that the court and the ministry will consider the wishes of parents and others, but those wishes must be set aside if they conflict with the child's best interests.

The ministry and the court decide what is in the child's best interests by first looking at the child's needs and circumstances, and then considering the parents' (or grandparents') ability to meet those needs. Each situation is decided on its own set of circumstances and the child's needs.

Different laws regarding children define what is in a child's best interests in different ways. [The BC Family Law Act \(FLA\)](#) deals with custody, guardianship and parenting, among other things. It provides that when a court makes changes or cancels a court order that involves a child, it must give top consideration to the best interests of the child. Section 37 of the FLA has a list of factors that judges must consider when deciding what is in a child's best interests:

- a) the child's health and emotional well-being;
- b) the child's views, unless it would be inappropriate to consider them;
- c) the nature and strength of the relationships between the child and significant persons in the child's life;
- d) the history of the child's care;
- e) the child's need for stability, given the child's age and stage of development;
- f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
- g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;

- h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
- i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
- j) any civil or criminal proceeding relevant to the child's safety, security or well-being.
- k) an agreement or order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being.

Best interests of Aboriginal children

In BC, both the [Adoption Act](#) and the [CFCSA](#) specifically say that “the importance of preserving a child’s cultural identity” is one of the factors that a court must keep in mind when deciding what is in an Aboriginal child’s best interests. The law considers this especially important when children are adopted and when a child is placed in another home after removal from the parental home because of a concern for their safety. The courts have ruled that when someone who is not Aboriginal applies to adopt or gain custody of an Aboriginal child, the law has to find a balance between honoring the bond that exists between the child and the non-Aboriginal person, and preserving the child’s cultural identity.

What this means is that it can sometimes be difficult for non-Aboriginal grandparents to adopt their Aboriginal grandchildren, or to gain custody of them. If you find yourself in this situation, talk to an advocate for help.

Child protection and Aboriginal communities

The LSS publication [Aboriginal People and the Law in BC](#) provided most of the source material for this section. Parts of it are taken directly from that resource. To get a free copy or to view it online, go to <http://www.lss.bc.ca/> and type the title into the search box.

First, it is important to acknowledge that indigenous families have suffered the removal of their children for generations. Child removal and the residential school system are seen by many as an attempt by the federal government to destroy indigenous culture. The negative effect of these policies can still be seen in the high percentages of Aboriginal children in the government’s care.

In BC, the Ministry of Children and Family Development has tried in recent years to get more indigenous community input in the child protection process. It is the law in BC that the ministry should make it a priority to place Aboriginal children in care with Aboriginal foster families,

ideally with a family from the child's own community. Non-Aboriginal foster families are only asked to foster Aboriginal children if an Aboriginal home is not available.

According to [the Child, Family, and Community Service Act \(CFCSA\)](#), the provincial law that governs child protection:

- The cultural identity of Aboriginal children should be preserved, and if the child is an Aboriginal child, the importance of preserving the child's cultural identity must be considered in determining the child's best interests, and is a necessary consideration in a plan of care for the child.
- Aboriginal communities should be involved in the planning and delivery of services to Aboriginal families and their children.
- Appropriate Aboriginal organizations must be notified of child protection proceedings involving Aboriginal children.

Designated representatives of Indian bands, Aboriginal communities, and the Nisga'a Lisims government are entitled to be parties to a child protection hearing for a child from their community.

[The CFCSA](#) also states that the ministry may work with child's Aboriginal community and band when it carries out a child protection investigation.

If a child is removed from the home, the ministry must notify a representative of the child's Aboriginal community, band council, or tribal organization. If the representative decides to participate, he or she has a special status when it comes to the hearing, and he or she has a right to:

- receive all records and information
- speak at the hearing
- call witnesses and question other witnesses
- participate in any mediation
- propose support for the child's parents or suggest another culturally appropriate plan for the care of the child.

Delegated authority

In addition, several Aboriginal communities provide child protection services through **delegated Aboriginal agencies**. These community-based indigenous agencies provide mandated services under the CFCSA on behalf of the MCFD through the delegation of powers, duties and authorities to individual staff employed by the agency. The amount of responsibility each agency has varies. It is determined by negotiations between the ministry, the federal government, and the indigenous community.

Currently, Aboriginal children make up more than half of all children in care in BC, even though only 4.8 per cent of the population reported an Aboriginal identity in the 2006 Census. Delegated authority is a way to return the traditional responsibility for child care to indigenous communities, so that children can be protected *within* their extended family, community, and culture, instead of being removed from it.

According to the ministry, as of October 2012, there are 22 delegated agencies currently in operation, representing 139 FN bands in the Province as well as a number of Aboriginal Children and Family Service agencies in urban centers.

A list of bands with delegated authority and their contact information can be found at:
http://www.mcf.gov.bc.ca/about_us/aboriginal/delegated/pdf/agency_list.pdf

To find out more about delegated authority for your family or your community, call the ministry's Aboriginal Regional Support Services at **250-387-707**.

If your grandchild is Aboriginal

Social workers who work for indigenous agencies know their communities well and work within the community to support children and families.

You may want to get in touch with the child services agency in your (or your grandchild's) community to see what level of responsibility it has for protection and support services.

Although services will differ from one delegated Aboriginal agency to the next, most agencies provide services that are culturally based to make sure children who are at risk stay connected to their indigenous communities. If you are an indigenous person yourself, you may be familiar with the agency in your community. If you are not, but your grandchild is Aboriginal, you can call the agency to get to know the people who work there.

Family Development Response: The family development response is a way to keep kids safe with their families by conducting a thorough, time limited assessment of the family's and child's strengths and needs and providing support services to enable the family to care safely for the child. A family development response is used in less serious child protection situations and where the family is cooperative with ministry/DAA involvement.

Investigations

When social workers first get a report of child neglect or abuse, they conduct something called an assessment within a few days. The social worker will ask questions, gather information, and make a decision about whether the ministry needs to keep looking into the reported concerns.

The actual time it takes depends on the situation. Some cases end after a short assessment. The social worker may decide there is no problem, or that the parents would be able to manage any problems with a bit of help from the ministry and no further action or involvement may be needed.

Occasionally, people make a report because of a simple mistake or because they just want to get the parents in trouble, not because there is a real problem in the home. If the social worker finds that the child is actually at risk, however, the ministry must provide a child protection response which includes providing [a Family Development Response](#) or conduct a child protection investigation. If you need to contact the ministry, use one of the phone numbers below:

The Ministry of Children and Family Development

General inquiries:

Phone - In Victoria: **250-387-7027**, Toll Free: **1-877-387-7027**

Website: <http://www.gov.bc.ca/mcf> **Email:** MCF.CorrespondenceManagement@gov.bc.ca

MCFD After-hours emergency line:

For emergencies outside of office hours, you can call the ministry anytime at:

Vancouver, North Shore, and Richmond: **604-660-4927**.

Lower Mainland from Burnaby and Delta in the west to Maple Ridge and Langley in the east: **604-660-8180 Toll Free: 1-800-663-9122**.

To report a concern about child abuse or neglect after hours, call the Helpline for Children at 310-1234 (no area code needed).

MCFD Child Care Programs and Services Call Centre: 1-888-338-6622 (toll-free)

Aboriginal Regional Support Services: 250-387-7073

Flow charts of the child protection process

The [CFCSA is law](#) in British Columbia that governs the provision of child welfare, including the delivery of family support services, child protection and children in care services. When a judge makes an order regarding a child protection case brought by the ministry it will be made according to this Act. [The LSS publication Parents' Rights, Kids' Rights](#), has flow charts for the [child protection process](#) and the [Aboriginal child protection process](#). The charts give you an overview of the process that is set in motion by an investigation. This process, and the grandparents place in that process is explained in much more detail in Chapter 6 Child protection and the court process.

Powers of social workers

The law gives social workers certain powers when they respond to a report of child neglect or abuse. The following provides an overview of the child protection process.

If you, the grandparent are involved in either the Family Development Response or an investigation, here are some things you might do to be helpful:

- Try to cooperate with ministry staff. Be as calm and respectful as possible when presenting your information and suggestions.
- Come up with a reasonable and workable plan that is least disruptive for your grandchild during the investigation, and suggest the plan to the social worker.
- Gather and preserve evidence to support your plan or case. Make notes of all meetings and events. Try to think ahead about what evidence you will need to support your case, and do not let it be lost. (For example, if you need to prove that you or someone else was drug-free over a period of time, take regular samples of hair for testing or get regular drug tests.)
- Be honest. Your credibility will be important if the case goes to court. It will also be important to developing a positive relationship with the social worker.
- Find the emotional support you might need from friends, advocates, or other social service agency personnel.
- Contact a lawyer to get legal advice as soon as you can. Each situation is different, so it is important to know your rights and options. Connect with community advocacy and support groups as soon as possible.
- Keep a journal of events, dates, times, and social workers' names.

It is a good idea to tell the social worker that you want to attend all meetings about your grandchild, and to exchange contact information. Generally, you can only participate in the meetings if the parents agree to let you do so. Social workers will generally work most closely with the parents, as the goal is to support parents and children so that children are safe in their parental home and families.

For this reason, it is really important to have a good relationship with your grandchild's parent. If you know your grandchild has a social worker in the ministry or delegated Aboriginal agency, you should leave your contact information with that person so that you can have input into your grandchild's care. Tips on how to work well with your grandchild's social worker can be found later in this chapter.

Guiding Principles

Social workers are guided by the following principles:

- The child's safety must always come first.
- The best place for children is usually with their family.
- Aboriginal children should stay in their communities whenever possible.
- If appropriate, the child's opinions should be considered when deciding what should happen.
- If support services would help a caregiver take care of a child, those services should be provided whenever possible. Examples are child care, counseling, and parenting classes.

Possible outcomes of an investigation

At the end of a Family Development Response or an investigation, the social worker may decide one of three things:

1) Your grandchild does not need protection.

Although your grandchild does not need protection, the family would do better with support services or the family could request support services such as counseling. In this case, a social worker will offer to provide or refer the family to support services. If the family does not want support services, the ministry/DAA will no longer be involved with the family and the file will be closed. Be sure the child's parents keep a copy of the letter the ministry sends informing them that the file is closed.

2) Your grandchild needs protection, and can safely stay with the parent.

If this happens, the social worker will make a written agreement with the parents that outlines what changes have to be made to keep the child safe at home. The ministry can also ask a family court judge for a supervision order to keep an eye on the parents and child. This would happen at a presentation hearing. The supervision order may include conditions the parents must follow to keep the child safe at home.

3) Your grandchild needs protection and is not safe in the parental home.

An agreement may be made to have your grandchild live temporarily with someone other than their parents e.g. through the Extended Family Program (EFP). Or if there are no other less disruptive means available to ensure your grandchild's safety and wellbeing, your grandchild may be removed. If this happens, contact a ministry/DAA social worker to discuss ways that you can care for your grandchild. You can do so without going to court. If your grandchild's case has already proceeded to court, the

judge may award you custody if you ask for it and it is in the child's best interests. For much more information on these options, see the chapters on child protection and the court process.

When children must be removed from the parental home and cannot be placed with a relative, the ministry places them in a foster home. If this is the case, be sure to ask the social worker for visits with your grandchild. It is also important to encourage the parents to visit the child, in order to keep a positive connection. It may prove to the court that the parents are committed to making the necessary changes and learning to provide a good home for the child.

If you want your grandchild to live with you

It is helpful to have an overview of a few different ways that the ministry can place your grandchild with when they are responding to safety concerns about your grandchild's home life. The rest of this chapter gives more information on the following options. If you want your grandchild to live with you:

Agreements with the ministry

You can make an agreement with the ministry for you to care for your grandchild after you have been notified that the ministry is concerned for your grandchild's safety or when the child protection case has already gone to court. Social workers work with you to reach an agreement rather than take a case to court. If you can reach an agreement, your case will end much faster. Grandparents are able to negotiate with social workers to create a plan that works best for them and their grandchild. Before signing any agreement, make sure you speak with a lawyer or legal advocate. If your grandchild has special needs, be sure to see the section on the different support services the Ministry may provide if it places your grandchild with you.

There are a few different ways that grandparents can arrange for their grandchild to live with them. Each approach has its own benefits and drawbacks. Under the ministry's current policy, there is room for social workers to be creative when making agreements for children to live with grandparents. Here are a few possibilities:

- with the parent's agreement and the approval of the social worker, arrange to have your grandchild live with you
- negotiate an Extended Family Program agreement
- become a restricted foster parent

Close the file

The social worker may decide that once the child is placed with you, the child is safe and the ministry no longer needs to be involved.

Just to clarify, there are service delivery files that a social worker can open during or after an investigation. Whereas a child protection file may be closed, a voluntary service delivery file may be opened at the request of the grandparent. The service delivery file is just for the delivery of services, such as counseling and child care.

If you believe it is in the child's best interests to return to the parent, make sure you speak to your social worker before taking any action. You could be placing your grandchild at risk of harm, losing credibility with the ministry. If your grandchild is in care, the social worker is the child's guardian and is legally responsible for ensuring the child's safety. You and the social worker will need to work together when planning for the child's living arrangements. It is important to speak with a social worker about the circumstances in which you are allowed to return your grandchild to the parents before the file is closed.

Sign an Extended Family Program Agreement

An Extended Family Program (EFP) Agreement (formerly a Kith and Kin agreement) is made between a social worker, the child's parent(s) and a child's relative to allow that relative to care for the child. Agreements can also be made with non-relatives who are close to the child or who have a cultural or traditional responsibility to the child. Under an EFP Agreement, the child is not in the ministry's care; the parents keep legal guardianship (to be eligible for EFP supports, the relative cannot have legal guardianship of the child), and day-to-day care of the child is transferred to the person named in the Agreement. EFP Agreements are designed to be short-term, but they can be renewed for a maximum of one to two years, depending on the age of the child, if it is determined that the interests and needs of the child are best met by extending the Agreement.

The ministry introduced these agreements in 2002 as a way to keep at-risk children with their families and communities, instead of placing them in foster care. This creates less disruption for the child and preserves the child's connection to extended family and community. EFP Agreements are known by a few different names, such as "kinship care agreements" or "section 8 agreements". This last name refers to the section of the *Child, Family and Community Service Act* (CFCSA), which makes the agreement possible.

EFP Agreements are intended to be temporary. The ministry usually arranges an agreement with a relative or other individual known to the child when the plan is for the child to be reunited with the parent(s). Although your grandchild will not be in the ministry's care, a social worker supervises the agreement to make sure your grandchild's needs are being met. To be eligible to care for a child under this kind of agreement, you must undergo a **criminal record check**, a **prior contact check** (a check of any previous contact you may have had with the ministry/DAA) and a home assessment.

You may want to ask a social worker about this program if you think this is the right option for your family.

An EFP agreement may work well for you if:

- you prefer that the parents keep legal guardianship of your grandchild;
- you hope your grandchild can return to the parents in the short term;
- you want to encourage the parents to remain in contact with your grandchild and be involved in planning for your grandchild's care; and
- you are prepared to negotiate with the ministry to get the right support services to make sure your grandchild's needs are met.

The EFP payment, along with the federal Child Tax Benefit (if you are eligible for this benefit), is equivalent to the payment a restricted foster parent receives. (Foster parents are not eligible to receive CTB for their foster children.) Note that payment of the CTB is subject to an income test. You are responsible for contacting the Canada Revenue Agency to obtain information about eligibility and tax implications related to CTB and other federal child benefits. (See Chapter 10 for more information)

Permanent Transfer of Custody under Section 54.01

When it is determined that your grandchild is unable to return to his/her parent(s)' care after being cared for under an EFP Agreement or a temporary custody order by a person other than the parent (also known as a temporary out-of-care order), a permanent transfer of custody order can be made under Section 54.01 of the CFCSA to the person who has been caring for the child. This can be done without the ministry first taking the child into care and applying for a continuing custody order.

Become a restricted foster parent (family home care agreement)

Restricted foster care is like regular foster care, except the foster parent is related or known to the child. If you become a restricted foster parent, your foster agreement is "restricted" to your grandchild. This means the ministry/delegated Aboriginal authority (DAA) will not ask you to foster other children, only your grandchild.

You get the same financial assistance and support services as regular foster parents. When you agree to become a restricted foster parent, you enter into something called a **family home care agreement** with the ministry/DAA.

Restricted foster care is intended to be temporary with the goal of reuniting the child with his/her parent and is used when there are no less disruptive means to protect a child. With restricted and regular foster care, the child must be removed from the parent's care and the ministry holds legal custody and guardianship of the child, and day-to-day care of the child is transferred to you. This means the social worker has the legal authority to make major decisions about your grandchild's education, healthcare, and upbringing. While your grandchild is

placed with you, the ministry/DAA works with the child and his/her parents to solve the problems that led to the child being in care so that the family can be safely reunited.

If it is determined that it is unlikely your grandchild will return to his/her parents despite continuing efforts to make this happen, the ministry/DAA could apply to the courts for a continuing custody order. This means that your grandchild is in the permanent care of the ministry and that plans will be made for the child to have a permanent family. These plans for the child will be discussed with you and could include your grandchild staying with you permanently through court orders, agreements or adoption.

You can apply to become your grandchild's foster parent at any stage of the child protection process. To become a restricted foster parent, you might have to go through the same orientation, home assessment, and approval process as regular foster parents. The length of this process varies, but you might get approval much more quickly than a regular foster parent.

A restricted foster care agreement may work well for you if:

- You would prefer to have your grandchild 'in care' and placed with you under a court order or Voluntary Care Agreement.
- There is little chance that the parents will be able to care for the child again and the court has ordered that the child be placed in temporary care or in the continuing custody of the ministry (in this case, the foster care you provide may be more permanent).
- You prefer for your grandchild be raised by family members instead of foster parents.
- You are willing to accept the ministry's involvement in your family's life and are comfortable working with a social worker to get access financial and other support services.
- You will need the support of other caregivers who care for at-risk children, such as the BC Federation of Foster Parents or the Federation of Aboriginal Foster Parents.

Similar to EFP, you receive monthly payments from the ministry. You will also have access to a wide range of established support services. Unlike EFP agreements, foster care in BC has been around for a long time and social workers are very familiar with the services and options available to you. The obvious downside is that you have no legal authority to make major decisions for your grandchild, except for those which you are able to make with the social worker.

Transition to Guardianship

If you enter into one of these agreements and you decide later on that you want to take care of your grandchild on a more permanent basis, you can usually apply to be appointed as guardian under the new *Family Law Act* which took effect in March 2013. However, if the ministry starts a child protection court case and tries to get a continuing custody order, your options could become limited. If they succeed in getting the continuing custody order, you will only be able to

change your mind and ask for guardianship later if the ministry agrees, or if you were a party to the original court case.

If you later get guardianship under the FLA, the ministry will no longer provide the support services that you received during the child protection process unless you make another agreement to receive them. If you believe you will need ongoing support to help you care for your grandchild, talk to your social worker before you apply for guardianship about how and what kind of support you can continue to receive after it is granted to you.

If your grandchild is in the continuing custody of the ministry (long-term regular or restricted foster care) and you decide that you want guardianship, you can ask the social worker to transfer custody to you under section 54.1 of the *Child, Family and Community Service Act*. If the ministry agrees, you will then have guardianship and parental responsibilities of your grandchild, and will continue to receive financial support to care for your grandchild.

Ways to reach an agreement

If you are in the meetings with your grandchild's social worker, anytime during the process you can suggest that the social worker arrange the following:

- a family group conference
- a mediation
- traditional decision making (for Aboriginal communities and other cultures)

Much more information about agreements and how to reach them can be found in the chapter Alternatives to court. If you reach an agreement through one of these methods, you do not have to go to court. If your case has already gone to court, you can still suggest any of the above alternatives. If everyone is able to come to an agreement, the court proceeding will end because the judge will make a consent order that reflects the agreement you reached.

If your case has already gone to court, you also have a fourth option, a family case conference. You can request one of these, or the Provincial Court judge may order you, the social worker, and the parents to attend one of these, an informal one- to two-hour meeting with the judge to see which issues you can agree on. Before you attend the meeting, write up a plan about what to do to make sure the best interests of your grandchild are served. This will help to focus your thoughts.

Services the ministry provides to children with special needs

The Ministry of Children and Family Development (MCFD) offers a range of programs and supports to eligible children and youth with special needs and their families. Services are intended to promote children's healthy development, maximize quality of life, assist families in their role as primary caregivers and support their full participation in community life.

If your grandchild has a special need (i.e., a disability and/or a developmental delay) s/he may be eligible for a number of child-focused programs that can be accessed through community agencies. There are additional supports and services for children with a diagnosis of an Autism Spectrum Disorder, developmental disability, or who have a severe disability. However, some MCFD direct supports may only be available if you are the legal guardian of your grandchild; please see the section below entitled Other Special Need Programs and Services.

- **Autism Spectrum Disorder Funding Program**
(Under Age 6 and Ages 6-18)
Funding to assist families with the cost of purchasing autism intervention services to promote their child's communication, social-emotional, pre-academic/ academic and functional life-skills development.
http://www.mcf.gov.bc.ca/autism/funding_programs.htm
- **Infant Development Program/Aboriginal Infant Development Program**
Home-based services for infants up to age three (for AIDP, may be up to school entry) who have, or are at risk for, developmental delay to optimize their development and participation in a range of community activities.
http://www.mcf.gov.bc.ca/spec_needs/idp.htm
http://www.mcf.gov.bc.ca/spec_needs/aidp.htm
- **Supported Child Development/ Aboriginal Supported Child Development**
Additional support that children with special needs may require to participate in preschool and child-care settings.
http://www.mcf.gov.bc.ca/spec_needs/scd.htm
http://www.mcf.gov.bc.ca/spec_needs/ascd.htm
- **Early Intervention Therapy Program**
Community-based physiotherapy, occupational therapy, speech-language pathology and family support services.
http://www.mcf.gov.bc.ca/spec_needs/eits.htm
- **School Aged Therapy**
Occupational therapy and physiotherapy services to school-aged children with special needs.
http://www.mcf.gov.bc.ca/spec_needs/school_aged_therapies.htm
- **Community Brain Injury Program**
Planning, co-ordination and funding for short-term, acute rehabilitation services and assistance with important life transitions for children and youth with acquired brain injuries. http://www.mcf.gov.bc.ca/spec_needs/brain_injury.htm

- **Family Support Services (including respite)**

A range of services to support parents in caring for their child or youth with special needs in the home, such as respite (a break from care giving) and behavioural support to address challenging behaviour.

http://www.mcf.gov.bc.ca/spec_needs/family_support_services.htm

- **Fetal Alcohol Spectrum Disorder (FASD) Key Worker and Parent Support**

Specialized support for families with children and youth with confirmed or suspected FASD.

<http://www.mcf.gov.bc.ca/fasd/index.htm>

- **At Home Program**

Medical and/or respite benefits to assist parents in caring for children with severe disabilities at home.

http://www.mcf.gov.bc.ca/at_home/index.htm

- **Nursing Support Services**

Specific nursing services in homes, schools and child care settings, for children with eligible special health care needs.

http://www.mcf.gov.bc.ca/spec_needs/nursing.htm

- **Provincial Deaf and Hard of Hearing Services**

A range services supporting Deaf, Hard of Hearing, and Deafblind individuals and their families including family development, youth transition support, access education and a residential program.

<http://www.mcf.gov.bc.ca/pdhhs/index.htm>

- **Provincial Outreach and Professional Supports**

Specialized services for children with significant disabilities to support their community-based teams in such areas as custom assistive devices (e.g., wheelchair prescription and fitting), and complex feeding and nutritional assessment.

http://www.mcf.gov.bc.ca/spec_needs/outreach.htm

Access to these above services depends upon a child's eligibility for the specific program and the available resources in the community.

Where to start

When a child is diagnosed with a disability, or identified as at risk for developmental delay, grandparents and other family members are understandably anxious. You may want to begin by identifying available programs and services based on the individual circumstances and needs of your grandchild. In addition to this, other grandparents can often provide practical information and emotional support.

A good place to start is by contacting your local MCFD office (http://www.mcf.gov.bc.ca/regions/regional_offices.htm) to find out about eligibility for Children and Youth with Special Needs services and other MCFD and government supports your grandchild.

Other special needs programs and services

- **Children and Youth with Special Needs in Care**
Children and youth with special needs in care of the ministry are eligible for necessary health supports and services such as essential medical equipment for home use. Please see Health Supports for Children in Care and Youth Agreements http://www.mcf.gov.bc.ca/foster/pdf/health_supports_cic.pdf
- **The Ministries of Health and Education**
The Ministry partners in [Health](#) and [Education](#) also offer a number of other programs that may assist you.

If the ministry/delegated Aboriginal authority (DAA) removes your grandchild

If it becomes necessary for the ministry/DAA to remove your grandchild from the parental home, here are some things you can do:

- **Get legal help.**
Talk to a lawyer or advocate as soon as you can. If you cannot afford a lawyer, you might qualify for legal aid.
- **Be involved in creating a plan of care for your grandchild**
When your grandchild's case goes to court (at the protection hearing stage), the social worker must present what is called a plan of care – that is, a plan for how your grandchild will be cared for during the court process and possibly after. Whenever possible the parents are involved in creating the plan. As a grandparent, you can ask to be involved too.

- **Go to the court hearings.**

It is important to go to court to show the judge you care about your grandchildren and that you are able to provide care for them. If you go to the hearing and you want to speak to the court, ask the court to make you a “party to the proceeding.” It means you can speak and ask questions in court, and you can also present any evidence you think is important. Duty counsel can help you with this. (They are lawyers who work at most courthouses who are available to give you free legal advice, assist with paperwork, and sometimes speak for you in court. However, their help is informal and they do not take on cases long-term.)

- **Ask for visits with your grandchild.**

If your grandchild will be in foster care during the court process, ask the social worker for visits with your grandchild. This is called “access under the CFCSA and contact under the FLA . It is important to your grandchild that you visit during this time, and will show the social worker and judge that you care about your grandchild’s well-being. If your grandchild is in interim or temporary custody of the ministry, you can apply for access under section 55 of the CFCSA. Discuss this with the social worker or a lawyer. Keep your own records of when you have talked to or spent time with your grandchild. This is to show a judge that you’ve remained connected to your grandchild, and it will help if you want guardianship of your grandchild later on.

- **Consider getting legal help for your grandchild if they are 12–18 years old.**

Children this age are asked whether they agree with a court order about where they will live and who will look after them. The court order is based on the plan of care the social worker and others involved with the child makes for your grandchild. Children age 12–18 have the right to speak with a lawyer for free before consenting to a court order. You or your grandchild can ask a social worker to set up an appointment for your grandchild to get legal advice if your grandchild’s voice is not being heard.

Tips to help you work well with the social worker

- **Bring someone with you** to meetings with the social worker who can provide you with support. This could be a trained child protection advocate, a friend, a relative, a member of your cultural or religious community, or your grandchild’s school counselor or teacher. If this person is an adult with a consistent presence in your grandchild’s life, it will help to show the social worker that your grandchild has a support network. Keep in mind that the person who comes with you may play a big role in planning for your grandchild, so choose wisely. **An advocate** can teach you about the child protection

process, and also help you to advocate for your grandchild's needs. These services are free.

- **Learn about the support services** that are available. There is a lot of help available out there, but it can be a challenge for a social worker to research everything and set it up for you. To make sure you are getting all of the help you can, look at the ministry's website so that you know what to ask for: www.mcf.gov.bc.ca. Usually grandparents get support from other places too, such as their grandchild's school, the public library, recreation centres, mental health centres, or other government ministries. The best way to find out about available services is to learn from other parents and grandparents. Sign up for a grandparent support circle or a parenting course to learn more. Call Parent Support Services for more information: 1-800-665-6880 (toll-free), or find them on the web at www.parentsupportbc.ca.
- **"It's in my grandchild's best interests."** It is important to use this phrase whenever you speak to people at the ministry, since your grandchild's best interests are also a top priority for them. Using this phrase will build common ground with the social worker and others who make decisions for your grandchild.
- **Be persistent.** Keep trying with a positive attitude. Remember that if what you are asking for is in your grandchild's best interests, you have a winning argument.
- **Ask to speak to the team leader or supervisor.** All social workers report to a team leader. If a social worker cannot answer some of your questions or if you are not happy with how this person is handling your file, ask to speak to the team leader. Be sure to do this respectfully, since you will most likely have to continue working with the social worker in the future.
- **Keep a record.** Always make a note of whom you spoke with and when, as well as what was discussed and agreed upon. This will help you remember details, and if you need to file a complaint, your notes will come in handy. Many people find it useful to keep all of their notes in a single notebook or binder.
- **File a complaint.** The ministry has a very helpful complaint process. Many grandparents have been successful in getting what they need by filing a complaint. More information about the complaint process is provided in the next section.
- **Get help from the Representative for Children and Youth.** The Representative's office can be an important advocate for your grandchild if you are not receiving what you need from the ministry. This help is free. See below for more information.

Common goals of grandparents and social workers

One final and important tip is to look for common ground with the social worker. Below is a list of common goals of grandparents and social workers.

Common goals:

The grandchild's best interests are a top priority for both grandparents and social workers:

- both want the grandchild to be safe and happy,
- both want the grandchild to have a loving home,
- both believe in keeping families together.

Complaints about the ministry

If you disagree with a decision or action of the Ministry of Children and Family Development, you can file a complaint. This is an option whether you feel a decision was unfair or you think you were treated unfairly. The following section has an overview of the steps to take if you have a complaint with the ministry or one of its service providers.

Please note that more detailed information can be found on the ministry's website at:

<http://www.mcf.gov.bc.ca/complaints/index.htm>

You can make a complaint if you are:

- A child or youth receiving or entitled to receive services
- A family member or caregiver complaining about their own treatment or their family member's treatment
- A foster parent complaining on behalf of a foster child
- A person acting on behalf of you if you are receive MCFD/DAA services
- A person acting on behalf of a child or trying to get services for a child (such as a teacher, doctor, or foster family)

Complaints can be made if you feel the social worker or the ministry:

- Did not treat you with respect, dignity, and fairness
- Was insensitive to your culture, or your grandchild's cultural heritage
- Unfairly denied your services
- Provided services that were of low quality
- Did not tell you what to expect in your dealings with them
- Did not involve you in case planning and decision-making about a child in care, but should have

- Did not respect the rights of a child in their care (see the booklet [*Your Life – Your Rights*](#), published by the Federation of BC Youth in Care Networks, available online at <http://fbcyicn.ca/>)

Generally speaking, when you have a complaint, the first step is to try to talk it over with the ministry social worker or the service provider. You can phone, fax, or go in person to the ministry office to discuss your concerns and try to solve the problem. Be sure to take notes about what happened. Write down the date and time, the person's name, what you requested, what they said, and what, if anything, they did to help you. If that does not work, you can try talking to the person's supervisor. If you choose not to pursue this option, or if you still are not satisfied with the result, you can file a formal complaint with the ministry.

If your complaint is with a contracted service provider, you should first try to go through the agency's own internal complaint resolution process. If you are not satisfied with the result, you can contact the ministry and make a formal complaint. The service provider is required to give you information about the ministry's complaint process, or you can contact the ministry on your own.

Formal complaint process

Step 1: Start the complaint

The first step is to contact your local ministry office by phone, letter, fax, or in person and let them know that you want to make a formal complaint. You can also contact the Complaints Manager for your region. To get the name and contact information, either ask at the ministry office or call the **MCFD Client Relations Branch** in Victoria at **250-387-7027**, or toll-free at **1-877-387-7027** from elsewhere in the province. The complaints manager does not have a direct connection to the staff or services that you are complaining about.

Step 2: Provide information

It will take less time to resolve the complaint if the information you give is clear. It is helpful to include key facts and events when describing your concerns to the complaints manager. If you did not first try to solve the problem by talking it over with the staff person responsible for the decision, the complaints manager may suggest that you try that first before making a formal complaint.

Step 3: Seek out advocacy and support

The ministry encourages you to work with a support person when you make a complaint. This person could be a language interpreter, relative, friend, advocate, counselor, or anyone else who can attend meetings with you and help you communicate. You can choose whomever you would like to support you through this process, or to make the complaint on your behalf. It is a good idea to choose a person you trust who is also a good listener.

Step 4: The complaint will be investigated

The complaints manager will talk to the worker and/or supervisor involved and then might look at your file, if you have one. The complaints manager may also talk to other people, including anyone you might suggest who can help the manager understand your complaint better.

Step 5: Complaints manager's response

You will then receive a letter from the complaints manager to let you know that your concerns were heard and to explain what will happen next. You should then get a written decision from the complaints manager in the mail within 30 working days. If you have not received a letter within 30 working days, you can ask the Office of the Ombudsman for an independent review (see below for more information).

Possible outcomes

The letter from the complaints manager will include the decision and the reasons for that decision. There are many different possibilities, including:

- an apology from the person who treated you inappropriately
- a change in the original ministry decision that you challenged (for instance, if you were denied a service, the complaints manager could direct the ministry to give you that service)
- changes in the way the ministry operates in areas such as policy, practice, staff training, or supervision, or
- no changes because the complaints manager finds that the decision or action you complained about was reasonable and fair

While making a complaint does not always mean that a ministry action or decision will be changed in your favor, it does mean that the ministry will review its actions.

The letter will also give you contact information for the Office of the Ombudsman in case you want an independent review (see next page). You can also ask to meet with the complaints manager to discuss your complaint or the decision.

Resources outside the ministry that can help with complaints

Independent review (Ombudsperson)

If you think that either the decision or the complaint review process itself has not been fair or proper, you can request an independent review from the BC Ombudsperson.

Office of the Ombudsperson

Phone: **1-800-567-3247 (toll-free)**

TTY (for the hearing impaired): **1-800-667-1303 (toll-free)**

Website: <https://www.ombudsman.bc.ca/>

The Representative for Children and Youth

If you think that the ministry has not handled your grandchild's case properly, and you are not satisfied with the outcome of filing a complaint, you can contact the office of the Representative for Children and Youth. This office is independent of the ministry, so it can sometimes take your side if there is a disagreement.

According to the office's website, "Responsibilities of the Representative" includes advocating for children and youth, protecting their rights, and improving the system for the protection and support of children and youth, particularly those who are most vulnerable.

The Representative serves all British Columbians from the ages of birth to 19, and is particularly concerned that young people in government care – such as those in foster homes, group homes or youth custody – do well.

These children and youth face greater challenges than those in the general population, especially [in the areas] of health and education, incarceration, and dependence on income assistance."

Office of Representative for Children and Youth

In Victoria: **250-356-6710**

In the Lower Mainland: **604-775-3213**

Elsewhere in BC: **1-800-476-3933 (toll-free)**

Website: <http://www.rcybc.ca>

The resource [*Parents' Rights, Kids' Rights: A parent's guide to child protection law in BC*](#), published by the Legal Services Society of BC, was utilized heavily for information in this section. To get a free copy of this publication or to view it online, go to <http://www.familylaw.lss.bc.ca/> and type the title into the search box on the right.

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.

Chapter 2

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.

Youth and the Law

Having a grandchild who is in trouble with the law can be a stressful and confusing experience. The best thing that you can do for your grandchild is to seek professional legal advice immediately. There are many resources available in the community to help you, many of them free.

This section provides a general overview of issues and resources relating to youth justice in British Columbia. You will also find brief responses to a few frequently asked questions.

The Supporting Grandparents Raising Grandchildren Resource Booklet provides excellent information for caregivers about youth and the tough issues they face, such as drugs, sex, gangs, and violence. You can find this booklet online at http://www.parentsupportbc.vcn.bc.ca/uploads/30/fe/30fe3ee16207a65e61af2e4ea90b0676/GRG_Resource_-Booklet.pdf

Parent Support Services

Lower Mainland: 604-669-1616 Elsewhere in BC: 1-877-345-9777 (toll-free)

If your grandchild is in trouble

There are many things that you can do to help if your grandchild is involved in a court proceeding:

- Give them emotional support and encouragement.
- Make sure they have access to legal advice from an experienced criminal lawyer as soon as possible. (It is important to remember that your grandchild's lawyer will work for your grandchild, not for you, even if you are paying the fees. The lawyer cannot reveal any information about the case to you without your grandchild's consent.)

- Learn how the youth justice system works and what role you can play at various stages (read the next section for more information on the basics of youth justice).
- Find out how certain decisions can affect your grandchild both in the short and long term.
- Make sure your grandchild is aware of the possible consequences of the situation and encourage him or her to ask questions.
- Stay informed about what is happening to your grandchild.

For more detailed descriptions of what you can do, see the following resource by the [Federal Department of Justice: If Your Child is in Trouble with the Law](#).

Youth justice in Canada

In Canada, the federal government makes the laws about what is and is not a crime, and each province is responsible for enforcing those laws. The Criminal Code of Canada applies to everyone in Canada. Young people (those under 18) can be charged with a crime under the code, as well as under the Youth Criminal Justice Act and the Controlled Drugs and Substances Act. The Youth Criminal Justice Act sets out how a young person should be prosecuted, sentenced (punished), and if necessary, detained (kept in jail). Under this act, “youth” means people who have had their 12th birthday but have not yet had their 18th birthday when the incident they are accused of committing took place.

For more information, see the website <http://www.courtprep.ca/>. It is written to help young people and their parents or guardians prepare for court. It has general information about how things work and what a young person can expect when he or she is accused of a crime. The website includes information about being a witness to or victim of a crime, what happens when you report a crime, as well as information on the court process, including details on investigations and arrests, bail, pleas, hearings, judgments, and appeals.

Youth justice in British Columbia

In British Columbia, two ministries are involved in youth justice. The **Ministry of Children and Family Development** has a **Youth Justice Services** division that provides community youth justice services and youth custody services to people aged 12 to 17. Information is available online at: http://www.mcf.gov.bc.ca/youth_justice/index.htm

The **Ministry of Justice** has designated child and youth officers who deal with matters relating to youth court. By law, if a person 12–17 years old is charged with breaking the law, that person’s parent or guardian must be notified. It is important for the young person to have a

lawyer. Children may qualify for free representation through legal aid. It is also important for the parent or guardian to attend court with them.

The **Ministry of Justice** also provides victim services and is responsible for policing and community safety. This ministry also provides funding to support the development of volunteer-based community accountability programs that embrace the principles of restorative justice.

The following website has additional information on youth justice in British Columbia:

<http://www.justicebc.ca/en/cjis/understanding/youth/index.html>

If you think that your grandchild has not been treated fairly, you can contact the following office:

Representative for Children and Youth

In Victoria: **250-356-6710**

In the Lower Mainland: **604-775-3213**

Elsewhere in BC: **1-800-476-3933 (toll-free)**

Website: <http://www.rcybc.ca/>

The following websites have more general information about youth justice:

<http://www.justicebc.ca/en/cjis/youth/>

<http://www.cbabc.org/For-the-Public/Dial-A-Law/Scripts/Youth-and-the-Law/225.aspx>

Aboriginal youth and the justice system

Native courtworkers can be a great resource if your grandchild is Aboriginal and is charged with a crime. They can help with information about your grandchild's rights, responsibilities, and options under the law, including whether there are alternative justice processes available to them. Courtworkers can also refer your grandchild to other resources to help address any underlying problems that might have caused his or her legal difficulties. They can be found in about 70% of the courthouses in the province. The organization below can put you in touch with a native courtworker.

Native Courtworker and Counseling Association of BC (NCCABC)

Phone: **604-985-5355**

Website: <http://www.nccabc.ca/>

Email: <mailto:nccabc@nccabc.ne>

Frequently asked questions

What should I do if the grandchild I am raising runs away?

First, call any friends or other family members who may have information about where your grandchild is. If you have done so and you still cannot locate your grandchild, report their disappearance to the authorities by calling 9-1-1. You will probably want to file a missing persons report so that the police will help you look for your grandchild and contact you right away if he or she is found.

What should I do if my grandchild is arrested?

If your grandchild is arrested, the police are supposed to try to contact an adult to let them know where the child is. The police may rely on information the child provides when deciding whom to contact and they will probably leave it to the adult they contact to get in touch with everyone else. This means that they might not contact you directly if they arrest your grandchild.

If you get in touch with them, the police will be able to provide information about what is going to happen next and who can be called for more information. If your grandchild is being charged with an offence, the police may choose either to keep the child in custody until the court appearance or release the child on a promise to appear in court on a set date. There are serious legal consequences if your grandchild does not appear in court.

What should I do if my grandchild is on probation?

If your grandchild is released on certain terms and conditions, both a lawyer and the probation officer can explain what this means. The probation officer may also help you get support services for your grandchild, including counselling, mediation, and mentoring services, as well as community support and community work programs, if required. In the event there is a need for temporary alternative housing or for long-term planning, the probation officer can make referrals to respite homes or emergency beds for youth, where available. You should get to know your grandchild's probation officer, since that person can be an important ally in getting your grandchild back on track.

Will my grandchild's record automatically disappear at the age of 18?

Whether a youth record remains open past the age of 18 or is closed at that point depends on factors such as the type of offence, the type of sentence, and whether the youth commits another offence while the record is still open. A youth record may affect your grandchild's ability to apply to college or university, to get certain jobs, and to travel to other countries. You can ask a lawyer or a probation officer about youth records.

If your grandchild is the victim of a crime

If you or your grandchild is a victim of crime, there are resources available to help you.

VictimLINK

This telephone service is available province-wide 24 hours a day, 7 days a week. It is also accessible by TDD (Telecommunication Device for the Deaf) and provides interpretation services for all of the major languages spoken in British Columbia. The VictimLINK operators provide information and referral services to all victims of crime, as well as immediate crisis support to victims of family and sexual violence.

Phone: 1-800-563-0808 (toll-free)

Crime Victim Assistance Program

Victims, immediate family members, and some witnesses to crimes may be eligible for financial assistance or benefits from this program. Application forms are available from any community- or police-based victim assistance program in the province, as well as online at:

http://www.justicebc.ca/en/cjis/you/victim/crime/financial_assistance.html

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.

Chapter 3

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.

Custody and guardianship

Many of the grandparents we spoke with expressed anxiety over not knowing what it meant to have custody or guardianship of their grandchildren. For many, no one ever explained to them what these words mean, or what rights and responsibilities come along with them. This chapter will explain some of the different legal relationships you can have with your grandchild. Later chapters have information about other arrangements, such as adoption and access or contact (the right of a child to visit with important people in his or her life).

First, it's important to understand that there are two different laws that might apply, depending on your circumstances. The [*Divorce Act*](#), a federal law in force throughout Canada, talks about the care of children in terms of “custody” and “access.” The *Divorce Act* only applies where parents are married spouses and have started a court proceeding under the *Divorce Act*. The [*Family Law Act*](#) is a provincial law that applies to everyone in British Columbia. It talks about people who are “guardians” and make decisions about children by exercising “parental responsibilities.” The time a guardian has with a child is “parenting time,” and the time someone who isn't a guardian has with a child is called “contact.” The *Family Law Act* applies to everyone, including married and unmarried parents and to grandparents.

Custody is a [*Divorce Act*](#) term that means having day-to-day care and control of a child, and the rights and responsibilities of a parent toward a child. Someone who has custody has the authority to make big decisions for a child, such as decisions about what sort of education, healthcare, or religious training a child will receive.

When married parents separate and have to go to court to resolve their disputes, they may apply for orders about custody under the *Divorce Act*, and the court may give custody to both of them (called “joint custody”) or to just one of them (called “sole custody”). Where a custody order has been made in respect of a child, a grandparent who wants to have the day-to-day care of a child must apply for custody under the *Divorce Act*.

Access is a [*Divorce Act*](#) term that describes a right to have time with a child and the right to ask for and be given information about the education, health and welfare of a child.

Married parents normally ask for orders about access to define their separate schedules of time with the child. Where an access order has been made, a grandparent who wants to have time with his or her grandchild must apply for access under the *Divorce Act*.

Guardianship is a term under the [Family Law Act](#) that refers to the person or people who have the obligation to care for a child and make important decisions on behalf of the child. Most of the time a child's guardians will be his or her parents, and they are usually the child's guardians while they are together and after they separate. It is possible for a parent not to be a guardian and for other people to become a guardian of a child. It is also possible for a child to have more than two guardians, and for a person to be removed as the guardian of a child.

A grandparent who wants to be appointed as a guardian of his or her grandchild must apply to court to be appointed, unless the grandparent has become the guardian of a child through a parent's will or through a special form (Form 2) in the *Family Law Act* Regulation. The *Family Law Act* does not allow people other than parents to be appointed as guardian through an agreement.

Parental responsibilities is the term the [Family Law Act](#) uses to describe the sorts of decisions a guardian may make about a child, and includes things like where the child lives and goes to school and about what sort of education, healthcare, or religious training a child will receive. An agreement or order can make all of a child's guardians jointly responsible for all decisions, or it can make only one or more guardians responsible for certain kinds of decisions to the exclusion of the other guardians. If there is no agreement or order about how parental responsibilities are shared, all guardians are presumed to have responsibility for all decisions involving the child.

Only guardians have parental responsibilities. A grandparent who wants to have parental responsibilities in respect of a child must apply to be appointed as the guardian of a child and apply for parental responsibilities in respect of the child. These applications can be made at the same time.

Parenting time is a [Family Law Act](#) term that means a guardian's time with a child. During a guardian's parenting time, the guardian has day-to-day care and control of the child and the right to make decisions about day-to-day issues involving the child. Only guardians have parenting time with a child.

A grandparent who wants to have parenting time with a child must apply to be appointed as the guardian of a child and apply for parenting time with the child. These applications can be made at the same time.

Parenting arrangements is the general term for any plans that have been made for the sharing of parental responsibilities between guardians and the allocation of parenting time among guardians.

Contact with a child is how the [Family Law Act](#) describes the time someone who isn't a guardian has with a child. Anyone make an agreement or ask for an order about contact with a child, including parents who are not guardians, grandparents and other relatives of a child, and other people who have a relationship with a child.

Someone who has contact does not have day-to-day care and control of the child and does not have the right to make decisions about day-to-day issues about the child.

Parenting arrangements does not include any plans that have been made for a person's contact with a child.

Types of custody arrangements under the [Divorce Act](#)

There are two types of custody: **Sole custody**: when only one person has custody of a child and **Joint custody**: when custody is shared between people.

- **A person may have sole custody of a child** as a result of a court order or an agreement. A person with sole custody has the primary home of the child and the child usually lives only with that person. If you have sole custody of your grandchild, you also get to make all of the decisions when it comes to how to raise him or her.
- **People may have joint custody of a child** as a result of a court order or an agreement. Joint custody does not always mean that a child lives equally in both homes, although it certainly can mean that. People with joint custody share decision-making responsibility for the child.

Custody orders usually say whether a person has sole or joint custody. However, you may come across the terms "split custody" and "shared custody." These terms are part of the federal [Child Support Guidelines](#) and could show up in a child support order. Split custody and shared custody are ways of describing how often a child lives with each parent or guardian in a joint custody arrangement, and these terms are important when the court calculates child support.

Types of parenting arrangements under the [Family Law Act](#)

Under the *Family Law Act*, one, two or more people can be the **guardians** of a child. The act doesn't talk about "sole guardianship" or "joint guardianship," just about people who are guardians and people who are not guardians. If more than one person is the guardian of a child, they are each guardians of the child.

Guardians raise the children in their care by the exercise of parental responsibilities. These are listed in section 41 of the act and include things like deciding where the child will live, deciding where the child will go to school and which activities the child will participate in, and deciding how the child will be treated if the child is sick.

Most of the time, all guardians will be able to exercise all **parental responsibilities**, and if this is the case the guardians are required to consult with each other about important decisions affecting the child. However, a court order or a written agreement can allocate one or more parental responsibilities to one or more guardians, so that just those guardians have the right to make decisions about those issues. It is possible to be a guardian and have no parental responsibilities. This might be the case where the guardian has not been very involved in the child's life or if the guardian and other guardians have a history of conflict.

The relationship between custody and guardianship

Guardianship under the *Family Law Act* and custody under [the Divorce Act](#) mean almost but not quite the same thing. Both include the right and responsibility to make important decisions for a child. An order for custody also includes the right to have the child present, subject to an order for access. A person who is a guardian has been appointed to be the caretaker of child, and acts as a trustee of the child's welfare and interests.

How to apply for custody or guardianship

You should speak with a lawyer if you want to get custody of your grandchild or be appointed as the child's guardian. The lawyer will listen to your story and explain your options to you.

One of the biggest legal issues facing grandparents who seek custody or guardianship of their grandchildren is that the court tends to favour the wishes of the birth parents. Although the only legal consideration is the best interests of the child, the court will generally assume that parents are able to decide what is in the child's interests and have the right to determine how their child is raised. If you want custody or guardianship of your grandchild, you will have to prove that it is in the child's interests that you have custody or be appointed as a guardian, and that often means proving that something is wrong with how the child is being cared for. Grandparents may have a tough case to make, especially if both parents are still in the picture.

Do not be discouraged! Many grandparents have successfully been awarded custody of their grandchildren, who are now leading happy and secure lives. Remember, the chances of success depend entirely upon the facts of each case.

Below is a brief description of the law that applies to custody and guardianship, followed by brief sections on the different legal options available to grandparents if they want to arrange to have their grandchild live with them, with or without the consent of the child's parents. The options are different depending on whether the Ministry of Children and Family Development is involved (about half the grandparents we surveyed had their grandchild placed with them by the ministry). Some of these options require that your grandchild's parents cooperate with you.

There is a table at the end of this chapter that sets out the different options, how to pursue them, and which laws apply to them.

Laws governing custody and guardianship

Each of the following laws has rules about when a grandparent can apply for custody or guardianship of a child. There is a table at the end of this section that illustrates which law might apply to your particular situation, with more information about getting custody in the next section.

Divorce Act

If your grandchild's parents are married and are in court getting a divorce, the [Divorce Act](#) says the court can award custody on application to them or to "any other person." However, because you are not one of the spouses you will have to get the court's permission before you can make such an application. Ask a lawyer or **duty counsel** for help with this. (Duty counsel are lawyers who work at most courthouses; they are available to give you free legal advice, assist with paperwork, and sometimes speak for you in court. However, their help is informal and they do not take on cases long-term.)

A grandparent cannot begin a court proceeding under the *Divorce Act*, since the act only applies to disputes between married people. You must instead ask to be "joined" to the parents' court proceeding before asking for custody. You will also have to go through this extra step if the grandchild's parents already have a divorce order that talks about custody.

Family Law Act

[The Family Law Act](#) says that anyone can apply to be appointed as the guardian of a child. A grandparent can apply to be appointed as the guardian of a child at any time; you do not have to wait for the child's parents to begin a court proceeding. A grandparent who is a guardian can also apply to have parental responsibilities in respect of the child and to have a certain amount of parenting time with the child.

A grandparent can also apply to have a certain schedule of contact with a child without being appointed as the child's guardian.

If a child's parents are involved in a court proceeding, the *Family Law Act* allows grandparents to apply to court to "intervene" in the matter. This would allow you to present an argument to the court to say why the court should or should not make a particular order, such as which of the parents the child should live with and how parental responsibilities should be shared between the parents. It will not allow you to ask for an order for yourself. Intervenors can only make arguments about the orders the parties are asking for.

Child, Family, and Community Service Act

If a child protection report is made about your grandchild, social workers will assess the report, make a decision about how to respond and take the least disruptive measures to keep the child safe. The ministry can remove your grandchild from the parent's care only if there is no other less intrusive way to keep your grandchild safe. Whenever a child is removed, a presentation hearing will be scheduled no more than seven days after the child is removed. You can attend the presentation hearing and ask to be made a "party" to the court proceeding, which would mean that you could speak and ask questions in court, and present any evidence you think is important. (Duty counsel can help you ask for this status. They are lawyers who work at most courthouses who are available to give you free legal advice, assist with paperwork, and sometimes speak for you in court. However, their help is informal and they do not take on cases long-term).

The ministry can also apply to the court to intervene in a Family Law Act proceeding if it considered in the best interests of the child to do so (section 97.1 of the CFCSA)

Which laws apply

<i>Situation</i>	<i>Relevant Law</i>
Child's parents are married/common law	The law regarding custody and access is the federal <i>Divorce Act</i> . The law regarding guardianship, parenting arrangements and contact is the provincial <i>Family Law Act (FLA)</i> .
Child's parents are unmarried	The law regarding guardianship, parenting arrangements and contact is the provincial <i>Family Law Act (FLA)</i> . The <i>Divorce Act</i> does not apply.
Ministry is involved due to a child safety concern	If there already is a court proceeding under the provincial <i>Child, Family and Community Service Act (CFCSA)</i> regarding your grandchild's care, the law regarding custody and access is the <i>CFCSA</i> (It is possible for a grandparent to apply for guardianship and parenting time or contact in the Provincial Court under the <i>Family Law Act</i> while a child protection court case is going on. A family court judge will hear both the <i>FLA</i> application and the child protection proceeding at the same time. If grandparents want to become guardians and end the ministry's involvement, this is the application they make.)

Custody and access under the Divorce Act

It is important to seek legal advice before beginning an application for custody of or access to your grandchild under the *Divorce Act*. For more info see *Chapter 8 – Getting Legal Help*.

Most of the time, grandparents will apply for orders about the care of a grandchild under the [Family Law Act](#). The only times grandparents must apply for custody of or access to a grandchild under the *Divorce Act* are when the parents are married and have started a court proceeding asking for orders about the children under the *Divorce Act* or when there is already an *Divorce Act* order for custody or access.

Orders about custody and access can be temporary or final. However, it is important to note that final orders for custody or access are never really final. A parent or other relative can always ask the court to change them if there is a significant change in circumstances. For more information about the court system, court orders, and how to apply for custody or access, see the *Chapter 9 -Using the Courts*.

Orders about custody and access can also be made with the agreement of everyone involved. These are called “consent orders” and are discussed below.

Only the Supreme Court can make orders under the *Divorce Act*.

Guardianship under the Family Law Act

Most of the time, the guardians of a child will be the child’s parents. However it is possible for a child to only have one guardian and for a parent to be removed as the child’s guardian. If someone other than a parent, including a grandparent, wants to become the guardian of a child, that person must apply to court for an order appointing him or her as the child’s guardian.

It is important to seek legal advice before beginning an application for guardianship in respect of your grandchild under the [Family Law Act](#). For more information see *Chapter 8 – Getting Legal Help*.

Applications for appointment as guardian are made under section 51 of the Family Law Act and notice must be given to the child’s parents, to any adult who lives with or cares for the child, and, if the child is a member of a treaty first nation like the Nisga’a, Maa-nulth or Tsawwassen First Nations, to the first nation government. If the child is 12 years old or older, the child must usually consent to the appointment.

The rules of the Provincial Court and the Supreme Court have special provisions for people who are asking to be appointed as the guardian of a child. Under Rule 18.1 of the Provincial

Court Family Rules and Rule 15-2.1 of the Supreme Court Family Rules, the person applying for guardianship must provide a special affidavit that requires the person to:

- describe their relationship with the child
- describe their plan for caring for the child
- describe any incidents of family violence that might affect the child
- describe any court proceedings about children the person has been involved with, including child protection proceedings
- provide a copy of a recent Ministry for Children and Family Development records check
- provide a copy of a recent protection order registry records check
- provide a copy of a recent criminal records check
- disclose any new criminal charges and any criminal convictions that do not appear on the criminal records check

This affidavit must be completed within a certain number of the days of the hearing of the application to make sure that the information is as up to date as possible. This affidavit must always be completed, even when everyone involved agrees to the appointment.

Orders appointing someone as a guardian can be temporary or final. However, it is important to note that final orders for guardianship are never really final. A guardian, a parent or another relative can always ask the court to terminate someone's guardianship of a child if there is a significant change in circumstances. For more information about the court system and court orders, see the *Chapter 9 - Using the courts*.

Parenting arrangements and contact under the Family Law Act

It is important to seek legal advice before beginning an application for parenting arrangements (parental responsibilities and parenting time) or contact in respect of your grandchild under the [Family Law Act](#). See *Chapter 9 – Getting Legal Help*.

Grandparents can apply for orders about the care of a grandchild under the *Family Law Act* at any time, whether there is a court proceeding between the parents or not. The only time grandparents cannot apply for orders under the *Family Law Act* is when the parents are married and there is already a *Divorce Act* order for custody or access.

Only guardians can ask for orders about parenting arrangements, but an application to be appointed as a guardian of the child can be made at the same time as an application for orders about parenting arrangements. Anyone, including grandparents, can apply for contact with a child.

Orders about parenting arrangements and contact can be temporary or final. However, it is important to note that final orders for parenting arrangements and contact are never really final. A guardian, a parent or another relative can always ask the court to change them if there is a significant change in circumstances. For more information about the court system, court orders, and how to apply for parenting arrangements and contact, see *Chapter 9 - Using the Courts*.

Orders about parenting arrangements and contact can also be made with the agreement of everyone involved. These are called “consent orders” and are discussed below.

Both the Supreme Court and the Provincial Court can make orders under the [Family Law Act](#). However, if a grandparent is asking for an order that would change an existing order, the application must be in the same court that made the earlier order.

Custody and access through a written agreement

Parents can formally give custody rights to a grandparent through a written agreement. There are many different ways agreements can be written. Earlier in this chapter is list of all of the possible arrangements that can be made for custody and access.

An agreement can also spell out access arrangements, which means how often someone, such as a parent or grandparent, can visit the child, whether the person can do so without supervision and whether there are other conditions on the person’s access.

Written agreements on custody and access can be filed in court and have the strength of a court order when it comes to enforcing custody and access rights. You can file a written agreement at your local court registry office.

Parenting arrangements and contact through a written agreement

Anyone who is the guardian of a child, including parents who are guardians and grandparents who are guardians, can make an agreement about how parental responsibilities and parenting time with the child will be shared. An agreement about parental responsibilities can say which responsibilities will be shared and which will not, and how the guardians will resolve disputes about important decisions. An agreement can also spell out parenting time arrangements, which means how often a guardian can visit the child, whether the person can do so without supervision and whether there are other conditions on the person’s parenting time.

Parents cannot make an agreement that anyone other than a parent is a guardian, even if everyone agrees that the person should be a guardian. A grandparent who wishes to be appointed as the guardian of a child must apply to court as described above.

The guardians of a child can make an agreement for contact with anyone who is not a guardian, including a grandparent who is not a guardian. An agreement for contact will spell out how

often the person can visit the child, whether the person can do so without supervision and whether there are other conditions on the person's contact with the child.

Consent orders

If you and the parents agree about who should have custody and access, or how parenting arrangements (parental responsibilities and parenting time) and contact should be shared, you can sign a consent order instead of, or as well as, making a written agreement.

The easiest way to get a consent order is by through the desk order process. No one has to appear in court: your lawyer just prepares the papers, everyone involved signs them, and then they go to a judge for the judge to review. You can get a desk order in both the Provincial Court and the Supreme Court.

If a court proceeding has started, you can also get a consent order if one or all of the parties appear in front of a judge at a hearing and describes the terms of the order and explains why the court should make the order. This can also be done in a less formal way through a family case conference in the Provincial Court or a judicial case conference in the Supreme Court. *See Chapter 7 – Alternatives to Court*

You can also get an order appointing someone as the guardian of a child as a consent order, however the person who is being appointed must complete the special affidavit that is used whenever someone is asking to be appointed as a guardian, and the judge may not make the order if he or she does not believe the appointment is in the child's best interests. Applications for orders appointing someone as the guardian of a child are discussed above.

You can get help with your consent order from family duty counsel (lawyers who give brief advice for free to those who qualify).

Unopposed orders

Sometimes orders about children are made without everyone's consent but without anyone fighting them; for example, the parents might not show up in court, or maybe they cannot be located at all. If this is the case, an unopposed order may be made in their absence.

This kind of order is a little more difficult to get, because the courts are more comfortable when they know that everyone understands what is going on and the nature of the order that is being asked for. However, these orders are also fairly common. To get one, you go to court in much the same way as you would for a consent order, and you have a hearing.

Orders after a court proceeding ends

Judges can also make orders about children after a court proceeding has ended, whether the proceeding ended with a trial or a settlement. However, it is important to remember that final orders about children are never really final. A guardian, a parent or another person can always ask the court to change the order if there is a significant change in circumstances after the court proceeding has ended. *See Chapter 9 – Using the Courts.*

Guardianship after the death of a guardian

Under the [Family Law Act](#), a person who is the guardian of a child, including a parent who is the guardian of a child, can appoint someone else to be the guardian of their child in the event of their death. The person who is appointed can be a grandparent, another family member or anyone else the guardian believes will do a good job.

Appointments like this can be made through the guardian's will or if the guardian completes and signs a special form (Form 2) provided in the Family Law Act Regulation.

Guardianship after the incapacity of a guardian

Under the [Family Law Act](#), a guardian of a child can appoint someone else to be the guardian of the child in the event they become unable to carry out their responsibilities as a guardian. These appointments can only be made by a guardian who is facing a permanent loss of mental capacity or a fatal illness. The person who is appointed can be a grandparent, another family member or anyone else the guardian believes will do a good job.

Appointments like this can be made if the guardian completes and signs a special form (Form 2) provided in the Family Law Act Regulation

Becoming a parent through adoption

Grandparents can legally adopt their grandchildren. The consent of the children's parents is usually required. When you do this, you become the legal parent of the child in place of the child's birth parents, and you get all the same rights and responsibilities as a birth parent, including guardianship of the child. More information about adoption is provided in *Chapter 5 - Adoption*.

Orders from other provinces

Dealing with orders about children from another province or territory, called extraprovincial orders, can be tricky and it is important to get advice from a lawyer.

Extraprovincial orders made under [the Divorce Act](#) can be registered in the in the Supreme Court under section 20 of the *Divorce Act*. These orders can be registered in either the Supreme

Court and the Provincial Court under section 75 of the *Family Law Act*. Extraprovincial order made under the local laws of another province can also be registered under the [Family Law Act](#).

When an extraprovincial order is registered, called being “recognized,” the order can be enforced as if it was an order of a British Columbia court.

You can apply on your own to ask the court to recognize an extraprovincial order (see <http://www.ag.gov.bc.ca/courts/forms/pfa/pfa809.pdf> for the application). However, you should get legal advice first. Information on how to find a lawyer or get advice is provided in *Chapter 8- Getting Legal Help*.

How orders are enforced

There are times when a parent will turn up at a grandparent’s home and take the children, despite the fact that the children live with the grandparents because of a court order, or withhold a child even though the grandparent has access or contact with the child. If a judge awards you custody or access, or parental responsibilities, parenting time or contact, and someone prevents you from exercising those rights, there are serious legal consequences.

The Criminal Code makes it an offence to take a child away from a guardian who has the care of a child or from a person who has custody of a child. It is also an offence to disobey a court order.

You can also apply to enforce an order or agreement for parenting time or contact under section 61 of the [Family Law Act](#). If the court agrees that you have been wrongfully denied parenting time or contact, the court make a number of orders to enforce the order or agreement, including:

- giving you make-up time
- requiring a person to attend counselling
- requiring everyone involved to go to mediation
- requiring repayment of any expenses incurred because of the denial
- requiring supervision when the child is exchanged


When nothing else will make the person obey the order or agreement, the court can make an order requiring the police to intervene and take the child to the person who is entitled to parenting time or contact, or an order sending the person who has denied the parenting time or contact to jail for up to 30 days.

Applications to enforce an order or an agreement about the care of a child can be made without letting the other person know about the application. This is only appropriate in extreme cases. Most of the time, these applications are made following the normal process that requires giving the other person plenty of notice about the application.

Legal options when the ministry is **NOT** involved

Legal option	Law
Written agreement with parent for contact	Family Law Act , section 58
Written agreement with parent for parenting arrangements if all parties are guardians	Family Law Act , section 44
Orders for parenting arrangements or contact	Family Law Act , sections 45, 59
Order for the appointment of a person as a guardian	Family Law Act , section 51
Consent orders for parenting arrangements or contact	Family Law Act , sections 45, 59, 219
Unopposed orders and orders without notice for parenting arrangements or contact	Family Law Act , sections 45, 59, 200
Orders for parenting arrangements or contact after court proceeding has ended	Family Law Act , sections 47, 60, 215
Order for custody or access in divorce proceeding	Divorce Act , section 16
Order for custody or access after divorce proceeding has ended	Divorce Act , section 17
Appointment of grandparent as guardian by will or Form 2	Family Law Act , section 53
Appointment of grandparent as guardian in case of guardian's incapacity by Form 2	Family Law Act , section 55
Adoption	Adoption Act , entire act

Legal options when ministry or DAA (Designated Aboriginal Authority) **IS** involved due to a child safety concern

Legal option	Law
With parent's agreement and ministry approval, child with grandparent;	
Grandparent becomes a restricted foster parent	Child, Family and Community Service Act (CFCSA) , various sections
Ministry places child with grandparent under an Extended Family Program (EFP) agreement (note: the parents	CFCSA section 8

keep guardianship rights)	
Ministry places child with grandparent under a Voluntary Care Agreement	CFCSA , various sections
Apply for guardianship under Family Law Act (Child, Family and Community Service Act and Family Law Act hearings are joined)	Family Law Act , section 51
Interim custody order (grandparent has custody of child until next hearing)	CFCSA , section 35(2)(d)
Temporary custody order (expires on a specified date)	CFCSA , section 41(1)(b)
Transfer of custody from ministry to grandparent before a Continuing Custody Order (permanency option)	CFCSA , section 54.01
Transfer of custody from ministry to grandparent after a Continuing Custody Order (permanency option)	CFCSA , section 54.1
Adoption	Adoption Act, entire act

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Chapter 4

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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.

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Chapter 5

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Adoption

Creating a stable home for their grandchildren is a priority for many grandparents. The most permanent way to do so is through adoption.

Adoption is a process by which a court creates a new parent-child relationship between a child and an adult who is not the child's birth parent. Through the process of adoption, all legal rights and responsibilities of a child's birth parents are terminated, and new rights and responsibilities are created between the child and the adoptive parent.

Once the adoption is final, there is no legal difference between the rights you have as an adoptive parent and the rights you would have if you were the birth parent of that child. For that reason, this is the most legally secure relationship you can have with a child you are raising.

The two main laws that govern adoption in BC are the [Adoption Act](#), which sets out rules to follow regarding most adoptions in BC, and the [Child, Family, and Community Service Act \(CFCSA\)](#), which sets out rules for the adoption of children who are in the care of the Ministry of Children and Family Development.

An adoption is made official through a court order under the Adoption Act. A judge is required by law to decide whether the adoption is in the child's best interests. A few things that a judge might consider when making that decision are:

- the child's safety
- the child's physical and emotional needs and level of development
- the importance of continuity in the child's care
- the child's cultural, racial, linguistic, and religious heritage
- the child's views

Aboriginal children and adoption

The *Adoption Act* says that if a child is Aboriginal, the judge must also consider the importance of preserving the child's cultural identity when determining what is in the child's best interests. This issue arises when the people who apply to adopt an Aboriginal child are not Aboriginal themselves. In such cases, the judge tries to find a balance between the importance of keeping the child connected to his or her cultural heritage and the degree to which the child has bonded with the adoptive parents.

If a child with status under the *Indian Act* is adopted by non-Aboriginal parents, the child keeps that status. Whether or not an Aboriginal child keeps band membership and treaty rights depends upon the particular band's by-laws, treaties, and other laws. The best source of information about what will happen to band membership and treaty rights upon adoption is the band itself.

Custom adoption

Many indigenous communities have traditions of adopting children by custom that were in place before the Canadian legal system was established. BC courts recognize these **custom adoptions** as legal under the *Adoption Act*. The Ministry of Children and Family Development supports custom adoptions as a way to make sure Aboriginal children in care are raised with Aboriginal families whenever possible. Custom adoption is a way for Aboriginal families, organizations, and communities to share in the planning for Aboriginal children.

If the Aboriginal child is in the care of the ministry, a customary adoption proceeds when custody of the child is transferred to the prospective adoptive parents under [section 54.1 of the Child, Family, and Community Service Act \(CFCSA\)](#). To find out more about custom adoption, visit: http://www.mcf.gov.bc.ca/adoption/custom_adoption.htm. You can also call LawLINE: 1-866-577-2525 (toll-free).

Open adoption

Although birth parents' rights and responsibilities to their children end once the children are adopted, everyone agrees that it is best for children if they remain connected to their parents in some way. This is called open adoption. It means that some sort of contact – anything from yearly letters to regular visits – is kept between the birth parents (sometimes including their extended families) and the adoptive family.

For example, the adoptive parent can make an **openness agreement** with your grandchild's father that he will visit once a month. Openness agreements are not legally binding, but they are a good way to ensure that other family members remain involved in the child's life.

If your grandchild is up for adoption to another family

If your grandchild is in the continuing custody of the Ministry of Children and Family Development, such as long-term foster care, he or she can be placed for adoption with another family, and you can lose your ability to visit. The ministry's Director of Adoption must consent to the placement, and the director must also inform any person who has been given access rights to the child (such as a grandparent) of the likely adoption.

Discovering that your grandchild in foster care will be placed for adoption may come as quite a shock for grandparents. An adoption legally changes who the child's parents are, so when it goes through, the grandparents' legal ties with the grandchild also end. Remember, however, that the judge should not grant an adoption order unless it is in your grandchild's best interests.

If you have received notice that your grandchildren in foster care will be placed for adoption, the first thing to do is contact the social worker to discuss your options. It is best to work cooperatively with the ministry. If you do not agree with the social worker, or have a question that he or she cannot answer, you can ask to speak with the team leader. If possible, speak with a lawyer.

If your grandchildren are in the continuing custody of the ministry and you do not want them to be adopted by another family, you can ask the ministry to permanently transfer custody and guardianship rights to you under section 54.1 of *the Child, Family, and Community Service Act*. This way, you become legally responsible for your grandchildren's care, without going so far as to adopt them, and the ministry no longer has a say in where your grandchildren live or who adopts them. More information about this sort of transfer of custody is in *Chapter 6 Child Protection and the Courts*.

If you are unhappy with how the ministry has handled your family's case, you can file a complaint. See *Chapter 1 Child Protection and the Ministry* for more information.

Deciding whether to adopt

You may be wondering how to know whether adoption is right for you and your grandchild. It is wise to speak with other grandparents or parents who have adopted to get a better idea about what adoption would mean for your family. It is also best to speak with a lawyer before making such a big decision. Adoption may be the best option for you and your grandchild if:

- it is clear that the child will not be able to return to the parents' care;
- you want permanent responsibility for your grandchild, without legal interference by the child's birth parents;
- you are prepared to support your grandchild, both emotionally and financially, until the child becomes an adult;
- you are willing to do without financial help. Many benefits end when you adopt.

Concerns about age

Many grandparents are concerned about their age when it comes to adopting their grandchildren. Grandparents will be happy to know there is no legal age restriction for adoptive parents. The only legal requirements in BC are that you be a resident of BC who is more than 19 years of age.

Many loving families have been created for grandchildren by adoptive grandparents of all ages. It is important to remember, however, that the judge will consider your age when deciding what is in the child's best interests – but only if your age would affect your ability to care for the child.

How to adopt

A great deal of the information in this section was taken from the section on adoption on the ministry's website. Go to <https://www.mcf.gov.bc.ca/adoption/> to read the original and to get other useful information about adoption.

The route you take to adopt your grandchild will be very different depending on whether the child is in the care of the ministry.

Adoption through the ministry

If you want to adopt a child who is in the continuing custody of the ministry, the following people must consent to the adoption:

- the ministry's Director of Adoption
- and the child, if 12 or older.

Because the ministry holds custody and guardianship rights in relation to the child, the parents' consent is not necessary. To adopt a child in the care of the ministry, you will need to go through the following steps:

- Meet with your grandchild's social worker to discuss the adoption process.
- The social worker will look at your home (a process called home study) in order to see whether you can care for your grandchild. This study may be followed by pre-placement visits with your grandchild, supervised by the social worker. After that, the social worker will make a decision about whether it would be in the child's best interests to live with you.
- If the pre-placement visits go well, your grandchild will be placed in your home. You will fill out a Notice of Placement. For 6 months, the social worker will continue to visit to ensure that you are taking good care of your grandchild. After that, your social worker will apply for an adoption order for you.

- For children between the ages of 7 and 12, the social worker has to conduct an interview to ensure that they understand the meaning of adoption and to find out what their views are on being adopted. The records or notes of this interview will be included in the adoption order application and will be filed with the court.
- Children who are 12 or older must consent to the adoption and any name change that you request. Children can change their minds about the adoption at any time before the adoption order is granted.
- Remember, the best interests of the child guide the judge's decision, including such factors as cultural heritage and bonding.

Adoption without the ministry

If the child is not in the ministry's care, the following people must agree to the adoption before it can take place:

- the child, if 12 or older;
- the birth mother;
- the father (as outlined in the *Adoption Act*); and
- any person appointed as the child's guardian.

Even parents who are under 19 years of age can still give legally valid consent to the adoption (which means that their parents do not need to consent too). If the adopted child is 7–12 years old, his or her views must be included in a written report. If one or both of the parents will not consent, you must prove to the court that it is in the child's best interest not to require their consent. The court may also decide that the consent of one or more parents is not required if:

- the parent is not mentally or physically capable of giving informed consent;
- you have made reasonable efforts to locate the parents to get consent, but you cannot find them;
- the parents have abandoned the child, not made reasonable efforts to meet their responsibility to the child, or are not capable of caring for the child; or
- other reasons that the court thinks are appropriate.

If your grandchild is not in the care of the ministry, the adoption process is very different:

- You must apply to the BC Supreme Court for an adoption order. You can contact your local BC Supreme Court Registry to find out more about filing an application and the supporting documents that are required, such as consent forms. Once your application is filed, a hearing date will be set. (To find your local Supreme Court Registry call: Service BC - In Victoria call: 250 387-6121- In Vancouver call: 604 660-2421 Elsewhere in B.C. call toll-free: 1 800 663-7867 or <mailto:EnquiryBC@gov.bc.ca>)

- Children who are 7–12 years old must be interviewed in private to find out if they understand the meaning of what is about to happen and whether they have any views on the proposed adoption. The interview can be conducted by either a registered psychologist/psychiatrist or by a registered social worker. At the end of the interview, he or she will submit a report on it to the court. The BC College of Social Workers can help you locate someone to write the report. Call 604-737-4916 or visit <http://www.bccollegeofsocialworkers.ca/>
- The ministry does not have a role in private relative adoptions; however, the court can order the ministry to review any aspect of the application and file a report.
- Children who are 12 or older must consent to the adoption and any name change that you request. They can change their mind about the adoption at any time before the adoption order is granted.
- Lastly, you must attend an adoption hearing, which is a session in court when the judge reviews your case. The judge will review all of the evidence (the documents that support your application) and then make an adoption order if it is in the child's best interests to do so.
- Remember, the best interests of the child guide the judge's decision, including such factors as cultural heritage and bonding.

For more information, see the ministry's website: <https://www.mcf.gov.bc.ca/adoption/>

Do you need a lawyer to adopt?

It is possible to go through the adoption process without a lawyer. Some Supreme Court registries in BC provide information packages for families to complete the adoption application on their own. You may wish to use one of these packages if the adoption is straightforward and everyone agrees. However, in most cases, it is highly recommended to get the help of a lawyer. If you decide to get a lawyer, look for one with experience handling adoptions. More information about finding and working with a lawyer is provided in *Chapter 8 – Getting Legal Help*.

Costs of adopting

It is difficult to say for sure how much an adoption will cost, since every case is different. If the adoption is straightforward and everyone consents, you may not need a lawyer, so the cost will be low. However, you may wish to get at least some legal advice on your application even if you decide to file it yourself at the BC Supreme Court. You could take advantage of some of the free or low-cost options in your community. (see *Chapter 8 – Getting Legal Help*)

If you decide to have a lawyer help you through the entire process, be sure to discuss the costs at the very beginning. Legal fees vary depending on the facts of each case. Some things that will influence the costs are:

- the number of adoptive parents, birth parents, and/or guardians involved (because this affects the number of consents or affidavits the lawyer will need to prepare),
- whether the child is over 12 years of age,
- whether either of the birth parents need to be found, and
- whether you will have to ask the court to go forward without the consent of one or more people, since this will mean extra work for the lawyer.

If the ministry or another government agency is giving you financial help to care for your grandchildren, this assistance will stop once you adopt. However, you are not totally on your own, financially speaking, once the adoption goes through. There are several other sources of financial help that you can ask for from the provincial and federal governments, such as post adoption assistance. For more information about the benefits available to you and how you can apply for them, see *Chapter 10 Financial Assistance and Benefits*

Support services for adoptive families

Adopting a child—even one you are related to—can be quite a challenge for you and your family. Below are organizations who offer support, as well as a list of books about adoption that may be helpful to you.

Adoptive Families Association of BC (AFABC)

According to their website, “The Adoptive Families Association of BC has supported adoption and adoptive families since 1977. Our province-wide family services ensure that people considering adoption (and those who have already adopted) are educated, connected, and supported.” AFABC has a contract with the Ministry of Children and Family Development. They also run workshops and support groups and have a library of helpful books and resources. Phone: 604-320-7330, or toll free 1-877-236-7807. Website: <https://www.bcadoption.com/>

Aboriginal community services for children and families

Many aboriginal communities across BC provide support services for Aboriginal families who are creating permanent homes for children. In *Appendix 8*, there is a list of these community groups and agencies, along with their contact information.

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Chapter 6

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Child protection and the court process

If the social worker, during a child protection response, finds that there are concerns over your grandchild's safety or well-being, you can try to make one of the agreements described in the preceding chapters. If you do not find out about the ministry's concerns early enough, or if you do not succeed in getting an agreement with the ministry, the social worker might decide one of two things:

- that your grandchild's care needs to be supervised by the ministry, or
- that your grandchild must be removed from the parental home.

If the social worker decides either of these things, your family will have to go to court. For information about finding a lawyer and other legal advice see *Chapter 8 of this Guide – Getting Legal Help*. Also check out Legal Services Society of BC <http://www.lss.bc.ca/>, or <http://www.clicklaw.bc.ca/>

The court process usually takes place in two stages:

- the presentation hearing and
- the protection hearing.

The law gives clear deadlines for when everything must happen, but in reality there are often delays and extra steps that can draw a case out for much longer. However, keep in mind that you can still try to work things out with the ministry by negotiating an agreement at any point during the court process, perhaps with the help of mediation or a family group conference.

Presentation hearing

When the ministry removes children from their homes, a social worker must go to court within seven days to explain why at something called the **presentation hearing**, a court hearing that is usually quite short. The ministry is not required to let grandparents know the date, time, or

place of the hearing and may not be aware of the grandparents' involvement. The best you can do is try to stay in touch with your grandchild and the parents and to contact the social worker as soon as possible to let them know you want to remain involved with your grandchild . Remind your grandchild to call you, or have an adult call you, if the ministry removes him or her from the parental home.

You can also call the courthouse to find out what day family cases are initially heard, then go to the courthouse and check the schedule (called the **docket**) to see if your grandchild's case will be heard that day. Go to the presentation hearing if you can, and ask the judge to make you a **party** to the hearing so that you can participate.

At the presentation hearing, the judge can make four possible decisions ([flow chart from Legal Services Society of BC](#))

Possible orders made at a presentation hearing

Child returned to or remains with the parent entitled to custody (child stays with parent)	It is safe for the child to return to the parent without any supervision by the ministry. The court case ends.
Interim supervision (child stays with parent) Section 35(2) (b) of the Child, Family and Community Service Act. (CFCSA)	The child can return to the parent, but there are concerns about the child's safety, so the judge gives the ministry power to supervise the parents using an interim supervision order. The case goes to a protection hearing.
Interim Custody of a person other than a parent (child with grandparent) Section 35(2) (d) of the CFCSA	The child is placed with someone other than a parent, such as a grandparent, through an Interim Custody Order. This means the grandparent has custody of the child until further notice, and the ministry can supervise the grandparent and child. The case goes to a protection hearing.
Interim custody of the director (child in care) Section 35(2) (a) of the CFCSA	The child is in the custody of the ministry or delegated Aboriginal Agency (such as in foster care), through an interim custody order. The case goes to a protection hearing.

Interim Custody of a person other than a parent

An interim order that the child be placed in the custody of a person other than a parent is also a supervision order because the order allows a social worker to visit the child to ensure that everything is alright. This type of order, which is made only through an application by a social worker, can be used to supervise the care of children when they are placed in the custody of someone else, such as a grandparent. If the judge places your grandchild in your custody through an interim custody order, you have the following rights and responsibilities (Section 47(2) of Child, Family and Community Service Act [CFCSA](#)):

- to provide day-to-day care for your grandchild
- to make healthcare decisions for your grandchild (sometimes with the consent of the parents)
- to make necessary decisions about your grandchild's education and religious upbringing (sometimes with the consent of the parents)

If the court finds it is in the child's best interests, it may order that the parents keep either or both of the following rights:

- to make joint healthcare decisions for the child
- to make necessary decisions about the child's education and religious

Interim custody of the Director

The judge could also decide that your grandchild must be placed in the custody of the ministry or delegated Aboriginal Agency until the protection hearing is over, in which case they will issue an order that the child be in the **interim Custody of the director**. That would mean that your grandchild will be placed with a foster family. You can ask your grandchild's social worker about the possibility of becoming a restricted foster parent (see *Chapter 1 – Child Protection and the Ministry*) if you are able to take care of your grandchild for as long as a few months. You can also ask for access (visits with your grandchild) if he or she is placed with another family. (See *Chapter 4 – Access and Safety*)

Protection hearing

The protection hearing begins within 45 days of the presentation hearing. Sometimes, everyone involved can reach an agreement – the social worker, the parent, the child if he or she is 12 or older, and you. This kind of agreement can be filed with the court and the judge may make a consent order. There will not have to be a protection hearing.

If you cannot agree, the matter must first be heard at a case conference. If no agreement is reached at the case conference, the case will go to a protection hearing.

At the end of the protection hearing, the judge has four choices listed below.

Possible orders made at a protection hearing

Supervision order (child with parent)	The child can return to the parent, but there are concerns about the child's safety. A supervision order is granted to the ministry of delegated Aboriginal Agency to supervise the parent and child for a certain amount of time.
Temporary custody of a person other than a parent (child with grandparent)	The child is placed with someone other than a parent, like a grandparent, through a temporary custody order. The ministry keeps supervising the grandparent and child. The temporary custody order has time limits.
Temporary custody of the Director (child in care)	The child stays in or is placed in the temporary custody of the ministry or delegated Aboriginal Agency (such as foster care). Temporary custody orders have time limits.
Continuing custody of the Director (child in care)	The child is placed in the custody of the ministry or delegated Aboriginal Agency on a long-term basis. The ministry or delegated Aboriginal Agency can place the child for adoption.

Temporary custody order

A **temporary custody order** is similar to an interim custody order. Both types of custody come with the same rights and responsibilities. The difference is interim custody is awarded at the end of a presentation hearing. It is meant to give everyone guidelines for the child's care until the protection hearing. A temporary custody order is awarded at the end of the protection hearing and expires on a certain date.

There are time limits to temporary custody that depend on the age of your grandchild. If you are taking care of more than one grandchild, the age of the youngest child is used to decide when the custody order expires. A social worker can ask the court to extend this order, but the total time that a child can be in temporary custody is:

- 12 months, if the child or the youngest child was under 5 years old on the date of the order,
- 18 months, if the child was 5–11 years old on the date of the order, and
- 24 months, if the child was 12 years old or older on the date of the order.

You can ask the court to extend the time limit by a certain amount. You will have to convince the judge that it is in the child's best interests to do so.

Continuing custody order

A **continuing custody order** puts a child in the care of the ministry on a much more long-term basis, sometimes permanently. With a continuing custody order, the ministry becomes the child's sole guardian, the Public Trustee becomes the guardian of anything the child may own or be entitled to receive, and the ministry can place the child for adoption.

This is very different from temporary custody. A continuing custody order is made when a temporary custody order is about to end and the circumstances that led to the removal of the child have not changed. It is rare for a child to return to the parent once a continuing custody order is made. These orders end when:

- the child turns 19
- the child is adopted
- the child marries
- the court cancels or changes the continuing custody order (see below), or
- custody of the child is given to someone other than a parent (under section 54.1 of the [*Child Family and Community Services Act \(CFCSA\)*](#)) – this could be the grandparent(s)

If the parents' circumstances change significantly, the people involved in the court proceeding can apply to change or cancel the order. (If you did not take part in the original court case, you cannot make this kind of application.) A judge will consider the facts and decide whether to cancel the order, make a new one, or leave it the way it is. A judge will consider the child's best interests when making this decision.

Transferring custody from the ministry to a grandparent

If your grandchild is in the continuing custody of the ministry, you may ask the social worker to apply to the court to transfer custody to you permanently (under section 54.1 of the [CFCSA](#)). If the judge decides it is in the best interests of the child, then your grandchild will no longer be in the ministry's care and you will have both custody and guardianship rights.

The purpose of transferring custody and guardianship to grandparents is to give children a sense of having a permanent home when adoption may not be an option. This might be the case when children have an ongoing attachment to their parents and placing the children for adoption would not be in their best interests, or when adoption would go against the children's or guardians' cultural practices. You will need to ask the social worker to make the application to transfer custody.

If it is clear that your grandchild will not return to the parents, you may think about adoption. You can try to adopt before, during, or after a child protection investigation, and it is important to get legal advice before going ahead.

When the Public Guardian and Trustee becomes involved

The Public Guardian and Trustee (referred to simply as "the public trustee") of British Columbia is charged with protecting the legal rights and financial interests of children and youth. The available services to fall into the following four areas:

- **Infant settlement reviews**
When a child is injured by another person's negligence, the public trustee looks at the compensation offered to make sure it is fair for the child.
- **Trust management**
If a child inherits or earns money and has no other legal guardian, the public trustee can hold that money in a trust until the child is old enough to be in charge of it.
- **Guardian of estate**
When a child is in the ministry's care and a continuing custody order has been made by the court, the public trustee and the ministry become the child's guardians. That means that they make decisions about what happens to any money the child inherits.
- **Other protective services**
The public trustee also makes sure the interests of children and youth are protected when it comes to wills, money, contracts, and property sales.

The public trustee becomes involved in the child protection process under certain circumstances:

- If the parent of a child who is removed is under 19 years of age.
- When a child is in the continuing custody of the ministry, the public trustee becomes the guardian of the child's property – that means managing anything the child might own or be entitled to.
- When a child is in the continuing custody of the ministry, the public trustee is responsible for protecting the child's legal interests. This includes starting or defending lawsuits on behalf of children in care.

If a child is in the continuing custody of the ministry and that custody is transferred to another person, the public trustee is no longer the guardian of the child's property. When custody is transferred, the person who has custody takes over financial decision-making for the child.

Aboriginal children, inheritance, and band distributions

If your Aboriginal grandchild is entitled to property or band distributions, it is possible that Aboriginal Affairs and Northern Development Canada (AANDC) could manage the property or money until the child comes of age. They usually become involved when a band asks them to in order to manage a child's band distributions. Different bands will have different guidelines as to when they ask for their involvement.

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.

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.

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 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
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.

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Chapter 8

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Getting Legal Help

Decisions you make about legal issues are very important, and a lawyer can help you understand your options and risks, as well as how your choices will affect your family. It is always a good idea to consult with a lawyer before making a major legal decision. Sometimes you can qualify for free help from a lawyer through legal aid. (Information and referral services are free to everyone, while advice services are free for people with low incomes.)

It is also important to know there are other people who may be able to help you through your legal matter, such as legal advocates. This section of the guide will provide information about the following:

Lawyers	Legal aid	Advocates
What are some tips to help me work best with my lawyer?	What is legal aid?	What is an advocate?
What can I expect from my lawyer?	Do I qualify for legal aid?	How can I find a legal advocate?
How can I find the right lawyer for me?	If I do not qualify, what other free legal resources are available to me?	How can I advocate for my grandchild myself?

If your family and/or your grandchild is Aboriginal, you can also look at the end of this section for resources that can help with the particular legal and cultural issues that your family might face.

Legal aid

A significant amount of the information in this section was taken from the website of the Legal Services Society of BC. Go to www.legalaid.bc.ca/ to learn more about legal aid.

Legal aid could be a good place for you to start your search for legal help. All of the services are free, and even if you do not qualify for a lawyer's services, you may be eligible for other forms of help, such as free legal advice or free information. This advice and information could help

you represent yourself, or it could help you get the most out of the services of a lawyer you hire yourself.

In British Columbia, legal aid is provided by the Legal Services Society (LSS), an independent, non-profit organization with a range of free services. Even if you do not think you qualify for legal aid, LSS encourages you to apply anyway as they may be able to help you find legal assistance even if you do not qualify for legal aid.

Free legal aid services include:

- Legal information from [legal information outreach workers](#) and [Family LawLINE](#) staff, [publications](#) on legal topics in many languages and the Family Law in BC website <http://www.familylaw.lss.bc.ca/>). This legal information is free for everyone, no matter what your income is.
- Legal advice [from family advice lawyers](#) who are located at several [family justice centres](#), the lawyers and paralegals on [Family LawLINE](#), and duty counsel[(Duty counsel are lawyers who are located at most courthouses; if you qualify they are available to give you free legal advice, assist with paperwork, and they can sometimes speak for you in court. However, their help is informal and they do not take on cases long-term. For more info on duty counsel go to http://www.familylaw.lss.bc.ca/help/who_FamilyDutyCounsel.php
- Legal representation from a lawyer – for those who qualify and have serious family, child protection, or criminal law issues. For advice on how to work with a lawyer see below in this chapter.

Free legal *representation*

To have a legal aid lawyer represent you, your net household income and assets must be at or below the levels in the table below. These guidelines apply to all types of cases, including appeals.

Your income might be lower than you think, since some income does not count. Only a trained legal intake assistant can really figure out whether you are financially eligible, so do apply.

Income limits for getting legal representation (a lawyer)

Household size (number of family members)	Net monthly income (after taxes and other deductions)
1	\$1,480
2	\$2,070
3	\$2,670

4	\$3,260
5	\$3,850
7 or more	\$5,040

This table is current as of April 2014, and could change. Check [LSS Website](http://legalaid.bc.ca/legal_aid/dolQualifyRepresentation.php) for the most up-to-date figures:

http://legalaid.bc.ca/legal_aid/dolQualifyRepresentation.php

Keep in mind that the amount of time you will get with the lawyer will be limited. In your first meeting, try to find ways in which you can maximize this time, such as working with an advocate or helping with the case yourself. There is more information on this below.

If you are age 55 or older you may also be able to get legal representation or advice from the BC Centre for Elder Advocacy and Support (BC CEAS). Phone 1-866-437-1940. They cannot assist you with family law matters but can assist with other legal problems such as debt, residential tenancy issues and pensions. More on BC CEAS here: <http://bcceas.ca/programs/legal-programs/>

Free legal *advice*

If you do not qualify for legal representation by a legal aid lawyer but you are still low-income, you may still be eligible for free legal advice services from:

- duty counsel at most courthouses,
- family advice lawyers (you will need a referral from a family justice counsellor or a child support officer), and
- a family lawyer via [Family LawLINE](#), a free phone service that helps people with family legal issues who do not qualify for legal representation. Information and referral services are free to everyone, while advice services are free for people with low incomes (see table below for the income rules).

[Family LawLINE](#)

Lower Mainland: 604-408-2172

Elsewhere in BC: 1-866-577-2525 (toll-free)

Hours: 9:30 a.m.–3:00 p.m. Monday, Tuesday, Thursday, and Friday.

9:30 a.m.–2:30 p.m. Wednesday

To be eligible for most legal advice from LSS, your net monthly household income must be below the levels shown in the table below.

Income limits for getting legal advice

Household size (number of family members)	Net monthly income (after taxes and other deductions)
1-4	\$3,265
5	\$3,860
6	\$4,470
7 or more	\$5,055

This table is current as of April 2014, and could change. Check [LSS Website](#) for the most up-to-date figures:

http://legalaid.bc.ca/legal_aid/dolQualifyRepresentation.php

If your income is slightly higher than the limits shown above, there is a chance you might still qualify for the services described there. You should contact LSS to see what you are eligible for.

Free legal information

If you do not qualify for any of the services in the sections above (legal advice or legal representation), you can still access free legal information from LSS such as:

- [Legal information outreach workers](#) who provide help in person. To contact one, call the [Family LawLINE](#) on 604-408-2172 (Greater Vancouver) or 1-866-577-2525 (call no charge, elsewhere in BC) or the legal aid office closest to you.
- [Family LawLINE](#) (see above).
- The Family Law website: <http://www.familylaw.lss.bc.ca>, which has a great deal of useful information about family law, the courts, and legal procedures. It also has links to court forms and legislation.

Look at the end of this chapter for a list of other very useful sources of legal information.

How to apply for legal aid

If you would like to apply for legal aid, visit a legal aid office (to apply in person) or call the [LSS Call Centre](#) (to apply over the phone). See the section '(state section and page no' below for contact information. It is helpful if you have all your financial and court information on hand when you phone. You will need to provide:

- At least two recent pay stubs,
- A recent welfare stub, or

- A recent income tax return or bank records (if you are self-employed or seasonally employed).

The legal intake assistant may ask for more information to figure out whether you qualify.

You will also need to bring:

- Proof of value of your assets – like a car, boat, home, or RRSP, and
- Any papers you have regarding your matter – like court orders.

Legal aid lawyers have limits to how much time they can spend on your case and what expenses are covered. Ask for information about those limits at the very beginning.

Working with a lawyer

Some of the information in this section is from the following sources (to read more, go to these websites):

- ✓ Family Law in BC - <http://familylaw.lss.bc.ca/>.
- ✓ The Law Centre - http://thelawcentre.ca/first_interview and
- ✓ The Law Society of BC - <http://www.lawsociety.bc.ca/page.cfm?cid=8>

How to find a lawyer

Keep in mind that your first meeting with a lawyer does not commit you to staying with that lawyer – if you are paying the legal fees, it is common to shop around to find the right fit. This may be impossible with legal aid, since in some communities there is only one lawyer who takes legal aid cases. When you apply for legal aid, ask about what can happen if you want to change lawyers.

(Occasionally, especially in smaller communities, there is a problem when the person on the other side of your court case has already consulted with many lawyers in your area to keep you from being able to hire any of them. Legal aid has some policies in place to deal with this situation, but private lawyers might not be able to consider taking your case. If you find yourself in this situation, try to find an advocate for help (see below in this chapter).

Whether you qualify for services from a legal aid lawyer or hire a lawyer yourself, it is important that you find someone who works well with you. You will need a lawyer who is right for your situation, because grandparent caregivers often have unique legal problems. You will want to look for a family lawyer who has experience in areas such as guardianship and adoption.

In many smaller communities across the province, there may be few or no family or legal aid lawyers. This limits your choice of lawyer and might mean that you have to hire a lawyer who doesn't live in your area. The long-distance lawyer/client relationship can make things more difficult. If there are advocates in your community, they might help you find a lawyer or help you to navigate the system instead of a lawyer (see the section on Advocates below in this chapter).

A good way to find a lawyer is to get a personal recommendation from family, friends, co-workers, local community agencies or counselling services. Also, if you belong to a support group, other members may have names of lawyers who regularly work with the particular issues you face.

If you do not know anyone in your community you could ask, you can call the [Lawyer Referral Service](#). It is a free program that can put you in touch with lawyers who have experience in the field of law that relates to you problem. Through this service, you can get a consultation with a lawyer for up to 30 minutes for a fee of only \$25, plus taxes.

Lawyer Referral Service

The Lawyer Referral Service operates by telephone.

You can call during business hours, 8:30 am to 4:30 pm, Monday - Friday at 604.687.3221 or toll free 1.800.663.1919.

For more information visit <http://www.cbabc.org/For-the-Public/Lawyer-Referral-Service>

If you know the name of a lawyer you would like to consult but do not have their contact information, you can use the Lawyer Lookup service of the Law Society of BC. Go to <http://www.lawsociety.bc.ca>. (Link to Lookup Service is on upper right hand side).

What to expect from your lawyer

People usually need a lawyer during the most emotional times of their lives. You may feel helpless, overwhelmed, angry, or frustrated by having to go through a family crisis and navigate the court system at the same time. For that reason, it is helpful to know a few tips on how to get the most out of the time you spend with your lawyer. There are different tips depending on whether you are eligible for a legal aid lawyer or you hire a private lawyer yourself.

The information below applies not just to a private lawyer you hire yourself, but also to legal aid lawyers.

- A lawyer's job is to explain the law and your legal options to you. Lawyers do not make decisions for you; they review your situation and offer suggestions on what you can do.

- Lawyers act on behalf of their clients. They should listen to what you say, and do what you decide to do. Remember that the lawyer is working for you.
- Anything you tell your lawyer is confidential and your lawyer cannot share your information without your consent. This includes any information you share, both for the purpose of getting legal advice and for other purposes.
- There is one exception to this rule about confidentiality: if you tell your lawyer that you believe a child or adult is being, or will be abused in the future, the lawyer may report this for the protection of the other person.
- Your lawyer can help with legal advice only. If you need emotional support, you may want to talk to a friend, an advocate, or a counsellor.

How to prepare for your appointment

A lawyer will need information about you and your situation in order to give you proper legal advice. If you have arranged to meet with a lawyer, you need to:

- Bring with you all court documents you have that relate to your case, such as a custody order or any new application.
- Take a list of questions, extra paper, and a pen so that you can write down the answers to the questions that you have.
- Have an idea of what outcome you would like to reach at the end of your meeting.
- Organize and bring any documents you think may help. If possible, bring a copy for the lawyer to keep, since that will save time and money.

Also try to have the following with you:

- Identification with your full name and address (tell the lawyer if you do not want this information given to anyone else)
- Full names, birth dates and current addresses of your child and grandchild
- Information about your income and everything you know about your grandchild's parents' income
- A list of incidents that explain any need for a protection or custody order (for example, specific dates, times, and places of physical or mental abuse, child abuse, or neglect)

Questions to ask the lawyer

If your lawyer's services have been provided by legal aid: *What are the time and cost limits?*

If you have hired the lawyer yourself: *How much will it cost, and when will I have to pay?* In the first interview, ask the lawyer how much your bill will be and if there will be any additional expenses. Tell your lawyer you want to be kept informed about costs as the case goes on. You are entitled to get a detailed bill before you pay. Some lawyers will agree to wait until your case

ends before getting payment from you. How and when you pay can be negotiated. If you think your lawyer charged too much, you can have a District Registrar review the bill (see below for more information).

What do I need to support my case? Ask what evidence you will need to gather to support your case. For example, you may need to get receipts from a daycare centre or statements from witnesses.

What can you help with? Ask your lawyer to explain what help he or she can provide and what steps are involved. For example, you may want the lawyer's help to draft your affidavit or to reply to a court order application.

How long will it take? Ask if there might be delays and how these can be avoided or reduced.

What are my chances of success? Ask what factors may impact on your chance of success.

Can I have copies for my own files? Keep copies of all documents and correspondence relating to your case, and keep them on hand in your own file. Ask how much copies will cost.

How and when will I hear back from you? Find out when and how often your lawyer will be in touch to inform you about how your case is progressing.

Make the most of your lawyer's time

Whether you hired the lawyer yourself or you have to keep within the legal aid time limits, these strategies will help you to make the most out of the time you get with your lawyer.

- Think ahead of time about how you will describe your problem. It is best if you have a clear idea of the history of the situation before you see your lawyer. The appointment may be time-limited, so you need to tell your story in a way that is clear and quick. Write down basic details of your legal matter ahead of time, setting out the facts in chronological order. Bring a copy for the lawyer to keep.
- The lawyer is not there to judge you and can only give you advice based on the information you provide. If you leave out important information, the advice the lawyer gives may be wrong for your situation. You might have wasted time, money, and perhaps even made your situation worse.
- Before each meeting, be prepared. Make sure you have all your documents in order and that you have read over anything your lawyer has sent you.
- Keep your communications to the point, and be organized. Do not spend time discussing issues unrelated to your legal matter. Remember, the lawyer will bill you for phone calls as well as the time it takes to read notes and documents.
- After you have explained your problem, ask the lawyer to tell you about your options. If you do not understand something, ask. Take the time to think things over while you are there to make sure you leave with a clear understanding of what your options are.

- Get to know your lawyer's assistants. If a secretary, paralegal, articling student, or junior lawyer can help you, contact that person instead of the most senior lawyer – their time is less expensive.
- Find out if your expectations are reasonable. Ask your lawyer for an opinion concerning your chances of success, and find out about your options and alternatives. Make sure you and your lawyer agree on your plans and priorities and that your choices are likely to lead to the outcome you want.
- Ask your lawyer to make suggestions about what you can do to save time and money. You may be able to prepare parts of the case on your own or with the help of a legal advocate (see below in this chapter).

If you think a lawyer has overcharged you

If you believe your lawyer overcharged you by a lot, you can have your bill assessed by a third party and potentially reduced. This is called **taxation** of the lawyer's bill. You must apply to have this done within 12 months of receiving the bill if you have not paid it, or within 3 months of paying the bill. However, **you should only pursue this option** if the amount of the overcharge is fairly high since you **can be forced to pay the lawyer's costs** to defend against the taxation if the bill is reduced by less than one-sixth (or less than about 17%).

The master or district registrar at your nearest Supreme Court provides this service. (To find the court closest to you, look in the blue pages of your phone book or visit <http://www.courts.gov.bc.ca/#>.) The first step is to go to the courthouse and pick up a complaint form, called an appointment form (Form 49). [Also available on line](#). Fill it out and return it to the clerk, along with a filing fee before the deadline. The clerk will give you a court-stamped appointment form with the date and time for the hearing to serve to your lawyer. You will have to attend a hearing, but it will be casual, and you can represent yourself. The district registrar will hear both sides and make a decision, usually pretty quickly, about whether the bill is fair. If the registrar decides to reduce the lawyer's bill, he or she will issue a legally binding judgment and, if the bill is reduced by at least one-sixth, you will either get a refund or not have to pay as much. If the bill is reduced by less than one-sixth or not reduced at all, you will have to pay your lawyer for the time he or she spent preparing for and attending the taxation hearing.

For more information, read or listen to Dial-A-Law script #438:

Dial-A-Law

Lower Mainland: **604-687-4680**

Toll free: **1-800-565-5297**

Website: <http://www.cbabc.org/For-the-Public/Dial-A-Law/Scripts>

Advocates are people who are trained to help you through a complicated situation. Like lawyers, they can explain the system to you and tell you about your legal options. Unlike lawyers, they work for free no matter what your income is, and they can help you in different ways, such as finding support services in your community or going with you to appointments.

A legal advocate is a person who has special training and experience in certain areas of law, such as poverty, child protection, or family disputes. Legal advocates usually work for a non-profit community agency and may have a background in areas such as social work, law, or mediation. Some lawyers appreciate working with an advocate, especially if you are receiving legal aid. The advocate can save you and your lawyer much time and money by assisting with the case.

Some advocates can help you only by phone; some can see you in person. Some advocates can come with you to appointments; some cannot. Advocates differ depending on their training and where they work. All advocates will help define and clarify the problems you are facing, give you information, offer support, and connect you with resources and services. An advocate may also teach you how to advocate for yourself, how to communicate clearly, and how to solve and prevent problems. An advocate may help you find the right lawyer; accompany you to appointments with lawyers, teachers, or social workers; work with you to develop an action plan; help you write letters; help you prepare for court; and help you prepare and complete all of the steps involved in a formal complaint.

Some advocates can help you to change the system itself. They may find others with a similar issue and help you form an action or lobby group. In that case, they might do the necessary publicity and recruitment of participants and allies. They might teach media skills, petition writing, and organizing strategies. They may connect you with provincial or national organizations who share the same concerns or who are already working on changes.

Much of the advice in the section above on working with a lawyer is also useful when working with an advocate. Many advocates work to teach you the skills you will need to advocate for yourself and your family so that you can become more independent. Following are some more tips for working with an advocate:

- Make sure the advocate has access to legal supervision.
- Be aware that conversations with an advocate may not be confidential the way that your conversations with your lawyer are. Discuss limits to confidentiality with your advocate in detail, in case what you tell the advocate could impact your court case.
- Some advocates are also trained counsellors. They may be able to assist in ways that are broader than resolving your legal problem.
- When you contact a potential advocate, ask about the person's credentials, experience, philosophy, and approach. Find out exactly what he or she can do for you and what time is available.

- Look for advocates with experience in your legal situation and a good reputation within the legal and ministry systems

How to find a legal advocate

When you contact a potential advocate, ask about the person's credentials, experience, philosophy, and approach. Find out exactly what he or she can do for you and what time is available. Look for advocates with experience in your legal situation and a good reputation within the legal and ministry systems.

To find an advocate near you, ask for recommendations from another grandparent, a counsellor, or your lawyer. If you do not get a recommendation, ask at one of the following organizations:

- Your legal aid provider. Legal information outreach workers at the nearest legal aid office can connect you with an advocate in your community. Call and ask to be transferred to the office nearest you:

[Legal Services Society Call Centre](#)

Lower Mainland: **604-408-2172**

Toll free: **1-866-577-2525**

Hours 9-4 Mon-Fri, Wed 9-2:30

- **PovNet, an online resource that connects people to registered advocates in their communities.**

Phone: **604-876-8638**

Website: **<http://www.povnet.org/find-an-advocate/bc>**

Email: **info@povnet.org**

- **BC Disabilities Benefits Advocacy Access Program.**

Lower Mainland: **604-872-1278**

Toll free: **1-800-663-1278**

Website: **<http://www.disabilityalliancebc.org/advocacydb.htm>**

- **[VictimLink](#) to find victim advocacy services near you.**

Phone **1-800-563-0808**

VictimLink BC is TTY accessible. Call TTY at 604-875-0885; to call collect, please call the Telus Relay Service at 711. Text at 604-836-6381.

Email **VictimLinkBC@bc211.ca**

You might have to be creative about finding an advocate if your community does not have a formal advocacy service. Check the front (and yellow pages) of your phone book for a women's centre, family service agency, crisis line, or mental health service and ask for contacts for advocates. You can also search the internet for "advocacy services bc" or "bc advocate" and you will find many suggestions. You might also come into contact with workers at different agencies who do not define themselves as advocates, but may still help you.

For more information about advocates, go to <http://www.familylaw.lss.bc.ca> and click on "Who can help" on the left side of the screen.

Tips to help you advocate for your grandchild and yourself

Often, grandparents must be advocates for themselves, their grandchildren, and even their adult child. Here are some general tips to consider when you are advocating for your rights and for what is best for your family. You may be involved with any number of systems and individuals, including the ministry and its social workers, welfare officials, school personnel, doctors, therapists, and lawyers.

It is a good idea to keep in mind that we all communicate differently. Whether English is not a person's first language, or their upbringing, culture, and beliefs influence how they interpret another person's words and actions, it is wise to try to look past these differences and find common ground. What is perfectly respectful to one person may be seen as disrespectful to another. Try to summon as much patience as you can: understanding is the goal of all communication, and it can take time.

In this section, you will find tips from an experienced advocate on how to advocate for yourself. You can also see the appendix for a sample of a letter that you can send to an agency or government ministry if you need to ask for services or benefits.

Do your homework

Find out as much as possible about the service, agency, or person you are seeking out ahead of time and learn what is possible under their rules. Learn what the service or government mandate (purpose) is and what to expect. You can learn this by checking websites, brochures, and also by talking to others who have been involved with the service or system, especially those who have had success. If you cannot get this information ahead of time, ask for it in your very first questions.

Make an appointment

Meeting in person usually works best. Make an appointment to show that you are serious, and that you respect the agency's time and your own. When you make the appointment, let the other party know what you want to discuss or learn and whether anyone will come with you (such as an advocate, friend, relative, or child). Find out how much time will be available and then come prepared to be brief and to the point. If you need the person to read material beforehand, make sure to send a copy ahead of time.

Be on time for the appointment. Being on time shows respect. Likely someone has set aside a period of time to meet with you. If you are late, you may lose your opportunity for an in person meeting that day.

Plan ahead

Think about what you want and how you will explain it—briefly—to the person you are meeting. You should also plan an explanation of how your request will help your grandchild and fit with a long-term plan that is in the child's best interests. Bring any documents that explain or support your request (such as quotes from the ministry's own legislation or policy, or a doctor's report). Write out reminders for yourself so that you make sure to cover everything in the meeting.

If your grandchild is old enough to speak in a meeting, plan out ahead of time how best to do that. If children must attend, make sure the words and tone of the discussion will be alright for them to hear. If the children are not there, bring a picture of them to remind everyone involved to stay focused on the children and their best interests.

Take notes

Keep a record of all communication in one book or folder. Date every contact and list what you requested, who was present, what they refused or promised to do, and when they agreed to do it. Sometimes it is worth it to write up a summary of the meeting and give a copy to the other parties. Always keep copies of any material you or they provide. Get all decisions in writing.

Respectfully assert your rights

Be assertive, not aggressive. Be honest and forthright. Do not exaggerate. Be respectful in all of your dealings. Be prepared to listen well, and expect the same in return. Ask questions and clarify to make sure you fully understand. Be patient and persistent. Stay on track. Learn all that you can about your rights. If you make a mistake, simply admit it and move on. Be responsible for your own words and actions. Work towards positive, productive relationships that will support you and your grandchild. Relationship-building takes time and effort. If you do not agree with a decision, ask to appeal it.

Work cooperatively

Work with the service provider to identify all the issues, concerns, and related facts. Be clear about what is known and what information is missing. Explain or review everything that has been done or tried so far. Work together to identify what you and your grandchild need. Brainstorm for all possible solutions, resources, and strategies. Look at the benefits, problems, and costs for each of these solutions in the long and short term. Get more information or professional advice if you need it. Choose the best solution for your grandchild. Make an agreement about who will do what—and get it in writing. Always get legal advice before you agree to anything that will be legally binding.

Find help to solve conflicts

If there is a conflict or personality clash with the worker or other person at the agency, ask for help to sort that out. Start by finding an advocate or clear-headed friend or family member to analyze the problem with you. Gather any additional information that will help, then meet again with the person in question and take along your advocate. If you are still not successful, request an interview with the person's supervisor. If that does not work, you can ask to make a formal complaint. Most agencies and services have a formal complaint procedure (and some of these procedures are described in this guide). Always go through the agency's complaints process first. If this system or person is going to be in your or your grandchild's life in the future, your goal should be to try to find a way to solve the problem respectfully and positively together.

If you find that you are still unsuccessful after your attempts to address your concerns using the agency's own complaint procedure, you might be able to appeal to an authority that oversees the agency in question, such as the Ombudsman, the Employment and Assistance Appeal Tribunal, or the Public Guardian and Trustee, depending on the problem. This guide has more information about your various appeal options in the sections that deal with the specific benefit. You can also consult [Dial-A-Law](#), a series of audio scripts on different legal topics, including how to complain. You can read or listen to them at <http://www.cbabc.org/>, or call 1-800-565-5297 (toll-free). <http://www.cbabc.org/For-the-Public/Dial-A-Law/Scripts>

Consider bringing a trusted friend

Sometimes it can be hard to advocate for yourself when your emotions about a situation are very strong. It can be hard to hear information clearly when we are very upset about a situation. Before you show up to a meeting or hearing on your own it is important to consider whether it might be worthwhile to bring along a friend to help you tell your story, explain your concerns, or take notes on what is said. This does not reflect a personal weakness—even the best self-advocate needs help sometimes.

Make some actions last resorts

You may feel tempted to go to the media to share your conflict or story. However, trying to publicize your problem in the media should always be the last resort when all other attempts for a fair resolution have failed. Involving the media could only serve to escalate the situation, and actually end up working against you. It could also have an adverse effect on the children, especially if they are old enough to see news reports or read newspapers.

Other last resort strategies may include writing to your MLA or MP, starting a petition, and forming or joining a protest or advocacy group to change an unfair law or policy. Another approach that you should look at as a last resort would be to sue the ministry, which is hard to do because of special protections it has under the law.

Other sources of free legal help

In addition to legal aid, there are other programs in the province that can help you with free legal advice, information, and referrals.

Access Pro Bono

Access Pro Bono is a non-profit society of lawyers who offer pro bono (free) legal services to people who cannot get legal aid but also cannot afford a lawyer (half of the people of BC fit into this category). Access Pro Bono clinics are located across the province and work out of community agencies.

Lower Mainland: **604-482-3195** Toll Free: **1-877-762-6664**

Email: help@accessprobono.ca

Website: <http://accessprobono.ca/>

The BC Courthouse Library Society

The BC Courthouse Library Society is a non-profit organization providing access to legal information resources and services to British Columbians. A lot of this information is available on their website.

Lower Mainland: **604-660-2841** Toll Free: **1-800-665-2570**

Website: <http://www.courthouselibrary.ca/>

Email: librarian@courthouselibrary.ca

Clicklaw

Clicklaw is a website that provides legal information, education and help for British Columbians.

Website: <http://www.clicklaw.bc.ca/>

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.

Chapter 9

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.

Using the courts

Much of the information in this section comes from the resources available on the Family Law in BC website (<http://www.familylaw.lss.bc.ca>) and the BC Ministry of Attorney General's website (<http://www.gov.bc.ca/justice/>).

Some grandparents get custody and guardianship of their grandchildren easily, with helpful advice and direction from family lawyers and legal advocates. Other grandparents have frustrating experiences, receiving little help or sympathy, and have to return to court many times before their issues are resolved.

One of the biggest legal issues facing grandparents who seek custody of their grandchildren is that the court tends to favour the wishes of the birth parent. Although top consideration must be given to the best interests of the child, the court will generally presume the parents are able to determine what is in the child's best interests, and it will be the grandparent's task to disprove this. This means grandparents may have a tough case to make, especially if both parents are still in the picture.

Do not be discouraged! Many grandparents have successfully been awarded custody of their grandchildren. Remember, the chances of success depend entirely on the facts of each case. Remember that it is important to seek legal advice before going forward with a court application. Turn to Chapter 8 Getting legal help for more resources. This section will explain how the courts work and how you can prepare yourself.

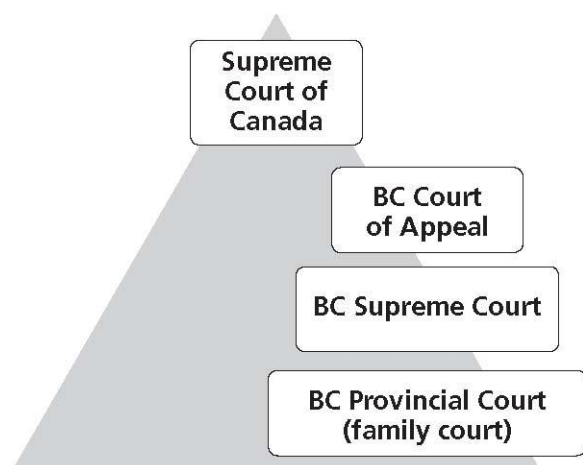
Choosing a Court

There are three levels of court in BC: the Provincial Court, the Supreme Court, and the Court of Appeal. You can think of the courts in terms of lowest to highest, with the Provincial Court at the bottom and the Court of Appeal at the top. (To appeal something means to ask that a decision be reviewed, either because the judge did not apply the law properly in the first case or, in some limited cases such as custody orders, because the circumstances have changed. See below in this chapter for more information about appeals.) This means that a decision of the Provincial Court is appealed to the Supreme Court, and a decision of the Supreme Court is appealed to the Court of Appeal.

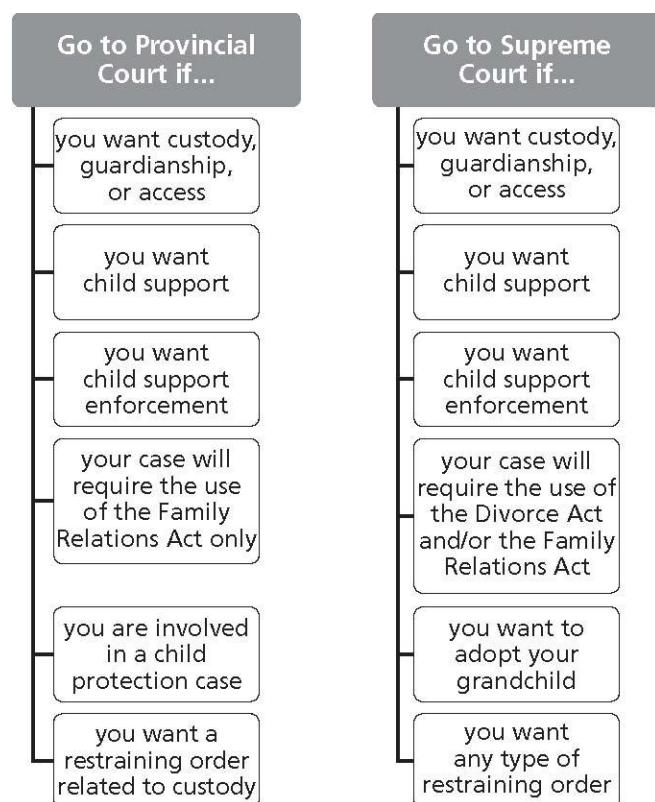
There is also the Supreme Court of Canada, which is sometimes confused with the Supreme Court of BC. The Supreme Court of Canada is the highest court in the country. It is located in

Ottawa and hears appeals from every province's Court of Appeal, including the BC Court of Appeal. The Provincial Court (often called family court) handles most grandparents' custody, guardianship, and access issues.

Levels of court



Figuring out which court you should go to is an important first step in any family law process. In BC, the Supreme Court and the Provincial Court handle some of the same types of cases, but procedures, timelines, costs, and the kinds of orders you can get are different. This graphic sets out which court might be better for your situation. (It was adapted from a chart on the Family Law website, which has a series of materials on how to choose a court. For more information on the subject, go to <http://www.familylaw.lss.bc.ca> and type "Choosing a court" into the search box.)



Provincial Court has a more informal atmosphere, more court locations, less paperwork, fewer rules, no filing or trial fees, and it is more common for people to represent themselves there.

Supreme Court has a formal atmosphere, fewer court locations, more paperwork, more rules, significant filing and trial fees, and lawyers usually represent clients.

The Provincial Court handles most grandparent-raising-grandchildren issues.

The times when a grandparent would be required to go to the Supreme Court to get custody or guardianship of their grandchild would likely be:

- to appeal a Provincial Court order
- to arrange custody, guardianship, or access rights during the divorce of a grandchild's parents
- to adopt a grandchild

If you go to Supreme Court, a master may hear your case instead of a judge. A master has the same powers as a judge to make interim orders for custody, guardianship, access, and support, but cannot make final orders or divorce orders.

If your grandchild's parents have a divorce order

If your grandchild's parents have a divorce order from the Supreme Court and you want to obtain custody of your grandchild after they get divorced, you should ask a lawyer how to proceed because it is not obvious which court you should go to. The different types of court orders

Final order

A final order is an order that a judge makes at the end of a trial. The order contains directions that are legally binding on both parties for the foreseeable future. Final orders are never completely final. If the circumstances change significantly, you or the other person can apply to change the order.

Because Provincial Court procedures are mostly designed for people to give their evidence out loud in front of a judge, you may get a final order as a result of your first appearance or application to the court. But to get a final order in Supreme Court, you generally have to return to court for trial after the first application.

Interim order

An **interim order** is an order made by a judge or master that is binding on both parties only temporarily – it only lasts until a final order is made at the end of the trial. This type of court order may also be described as interlocutory or temporary.

Because the courts are very busy, it often takes several months to a year – or more – to go to trial after you apply for a trial date. The interim order fills the gap by giving everyone rules to follow in the meantime. Interim orders might deal with procedure, like ordering someone to produce a financial statement, but can also deal with weightier matters, like custody

An interim order is based on limited evidence and arguments presented when the order is first requested. The interim order itself will not usually have a time limit or expiry date. It will last until you go to trial, whether that is six months or several years later.

Without notice (ex parte) order

A **without notice order** (also called an **ex parte order**) is when a judge makes a decision without letting the person named in the order know that such a decision will be made. The person named in the order does not appear in court, but gets a copy of the court order after it is made.

A without notice order is only available if urgent or special circumstances exist, and can be used if you and/or your grandchild need protection. In this case, a judge can make an order without notice that the person you need protection from cannot contact you.

How to apply for a court order

You can apply for a court order by filling out a court form. Provincial Court forms and instructions are available free of charge from any Provincial Court Registry.

If you want to begin or change custody, access, guardianship, or support arrangements, you might have to go to the Supreme Court. Unlike the Provincial Court, the Supreme Court charges court fees. However, if you cannot afford them, you can apply for an **indigency order**, which excuses you from paying court fees.

To find out more about **indigency orders**, see the Family Law in BC website:

<http://www.familylaw.lss.bc.ca/guides>

Help to fill out court forms

The material in this section came from the Family law website's fact sheet on the subject. To read the whole fact sheet, go to <http://www.familylaw.lss.bc.ca> and type "help with forms" into the search box.

If you cannot afford a lawyer but you need help filling out court forms, there are several ways to get help. You will have to provide all the necessary information, but there are people who can sit with you while you fill out the forms. They can also check your completed forms to make sure you filled them out correctly. To get in touch with any of the first three resources, call the Legal Services Society Call Centre (Toll Free- **1-866-577-2525**).

- **Family justice counsellors** (in Family Justice Centres across BC) – for info http://www.familylaw.lss.bc.ca/help/who_JusticeCounsellors.php
- **Family advice lawyers** (in family justice counsellors' offices in Kamloops, Kelowna, Prince George, Surrey, Vancouver, and Victoria) - for info http://www.familylaw.lss.bc.ca/help/who_AdviceLawyers.php

- **Family duty counsel** (in Provincial Courts and some Supreme Courts) – for info http://www.familylaw.lss.bc.ca/help/who_FamilyDutyCounsel.php
- **BC Supreme Court Self-Help Information Centre** (a drop-in resource located in Vancouver only) <http://www.supremecourtselfhelp.bc.ca>

Free (pro bono) legal clinics across BC (for more listings see appendix):

- Salvation Army Pro Bono Lawyer Consultant Program
<http://www.probono.ca/legaladviceprograms.php>
- UBC Law Students' Legal Advice Program (<http://www.lslap.bc.ca/main/>)
- Western Canada Society to Access Justice legal clinics
(<https://www.accessjustice.ca/public/clinics.asp?province=BC>)

When you fill out a court form, you will have to identify as either the **applicant** or the **respondent**. In Family Court, the applicant is the person applying for the court order, and the respondent is the person who responds to the application. In other courts, you may be called the **plaintiff** instead of the applicant, and the **defendant** instead of the respondent.

Family court forms

Here is a list of a few family court forms you may need when using the courts:

- **Form 1** [Application to obtain an order](#)
- **Form 2** [Application to change/cancel an order](#)
- **Form 3** [Reply \(to an application\)](#)
- **Form 4** [Financial statement](#)
- **Form 15** [Subpoena \(to call a witness\)](#)
- **Form 17** [Affidavit](#)
- **Form 18** [Request](#)
- **Form 19** [Consent \(to an order or to change\)](#)

You can find a link to any of these forms and information on how to fill them out on the Family Law in BC website: <http://www.familylaw.lss.bc.ca>. [Look on the right-hand side under "Shortcuts" for the section on "Court forms."](#)

Family Justice Registry (Rule 5) Program

Rule 5 of the Provincial Court (family) rules enables family matters to be resolved using government and community resources, along with the traditional court process, if needed. This approach has led to the creation of family justice court registries and the Family Justice Registry Program.

If you live in Kelowna, Nanaimo, Surrey or Vancouver and you file an application for custody, access, guardianship and/or support, Rule 5 of the Provincial Court rules will apply. Under Rule 5, these four sites are designated as family justice court registries and requires any applicant/respondent to meet separately with a family justice counsellor to discuss their options before being given a court date. These options may include:

- Attending court;
- Referrals to a lawyer or a child support officer;
- A Parenting After Separation program;
- Or mediation with the other parties

(See [Chapter 7](#) for more information about family justice counsellors.)

Remember that anyone can request the help of a family justice counsellor before filing an application.

Case conference before trial

Both the Provincial Court and the Supreme Court hold case conferences. In Provincial Court, the conference is called a family case conference (see Chapter 7 for more information), and in Supreme Court, it is called a judicial case conference. The procedures for each are different, but the purpose is the same: to try to settle the case more quickly, without a full trial.

At a case conference, the judge will identify your family's issues and discuss different ways to resolve them. The meeting is confidential and informal. A case conference can save you time, money, and stress, especially if it helps you to settle your case more quickly.

Depending on your situation, you may be required to go to a case conference before your case goes to trial. If you live far away from the courthouse, you can participate by telephone.

If you have questions about case conferences, Family Justice Centres provide free information and can help you learn about the process. To find a Family Justice Centre go [to Clicklaw](#) for a list of centres (and their contact numbers) or call Service BC, toll free, at 1-800-663-7867.

Court interpreters

If you do not speak or understand English very well, you may need an interpreter to help you understand questions in court and to make sure the court understands your responses. If you need a court interpreter, tell the court a long time before the court date. Phone the court registry where your case is being held and explain the situation. In larger cities there will be an interpreter clerk to give you information.

You will have to pay the interpreter fees yourself, at least on the day of the hearing. If the court rules in your favour and orders the other party to pay your legal costs, they will have to pay

you back for the fees. *“The court pays for interpreters only when you are in the courtroom. For anything outside the courtroom, you need to bring along a friend or family member to interpret for you, or hire a professional interpreter.”* From Justice BC website -

<http://www.justicebc.ca/en/fam/help/interpreters/cost.html>

How to represent yourself in court

Many grandparents use either the Provincial Court or a family case conference to establish a legal agreement. This section will teach you about rules and procedures in Provincial Court so that you can prepare to represent yourself.

A court process usually begins with what is called a **first appearance hearing**, where you introduce your issue to the judge. To prepare for your first hearing, or any other hearing, the following suggestions from the Ministry of Attorney General may be helpful (for more information on representing yourself, go to <http://www.supremecourtselfhelp.bc.ca>). The [Justice Education Society](#) also has useful resources.

Before the hearing

- 1) Re-read all the documents that you or the parent filed at the court registry as part of your application to Provincial Court.
- 2) To help organize your thoughts, write down:
 - why you are going to court
 - a list of the issues you hope to settle
 - your position on each issue
 - what you want the judge to order
- 3) Prepare a detailed outline of what you think the judge needs to know to come to a good and fair decision. (This is just for you. You will not be able to give your notes to the judge or read them out as part of your evidence. However, if you forget what you want to say, you may ask the judge if you can refer to your notes.)
- 4) Collect any other documents you think you may need in court. For example, if you are going to court to gain custody or access, you should bring any relevant documents, such as a *Parenting After Separation* certificate. Make three copies of all the documents you want to judge to see: one for you, one for the parent, and one for the judge.
- 5) If you are not comfortable speaking in English, or you communicate only in sign language, ask court staff to arrange for an interpreter well in advance of your court date.

Calling witnesses

You cannot call witnesses for a first appearance hearing. However, if the judge decides your case should go to a trial, you may want to call witnesses to speak on your behalf. If you do so,

make sure you notify them of the court date well in advance, or ask court staff about how to arrange for a subpoena (summons to appear) if necessary.

On the day of the hearing

- Make sure you have all the documents you need (and copies) in one neat folder or envelope.
- Dress neatly – this is one of the most important times to make a good impression.
- Bring a paper and pen so you can write down notes or questions as they occur to you.
- Arrive early – at least 15 minutes before your court appearance is scheduled.
- Find out which courtroom your case will be heard in and wait outside the door. (To find your courtroom, check the daily list posted in the lobby of the courthouse, the court registry office, or at the information desk, if there is one.)
- Turn off your cell phone, take off your hat, and throw away any chewing gum before you enter the courtroom.

Court etiquette

How to address the other people in the courtroom:

- Call the judge “Your Honour”
- Refer to the court clerk as “Mr. or Madam Clerk”
- Refer to the other party (the parent) as Mr., Mrs., or Ms., followed by their surname (last name).

How to act while in court:

- Be on time. Once you are inside the court room, take a seat at the back. The court may hear several cases in one session, so you may have to wait for your case to be called.
- Stand up when the judge enters the courtroom and remain standing until the judge sits down.
- Stand whenever you are asked to speak and whenever the judge speaks to you.
- Be brief and to the point. Even though you may be emotional, try to speak calmly.
- Do not interrupt the judge or anyone else while they are speaking.
- Do not argue with the judge.
- If you do not understand a part of the proceeding, ask the judge and they will explain the procedure.

Information to present in court

The Legal Services Society of BC has a checklist of items to include in an affidavit (a written statement used in Supreme Court) or to present aloud (in Family Court) that we thought would be useful to include here. (What follows is an excerpt; the complete resource can be found at <http://www.familylaw.lss.bc.ca>. Click on “[Fact sheets](#)” on the right-hand side, then look under “Legal system & courts.”)

The following suggestions are a starting point or general overview of the kind of information that should be given to a judge/master who is hearing a family case. You will need to adjust them to your particular circumstances.

- **Background information** of both you and the other party, like age, current job, and address, etc.
- **Role of each party** throughout your relationship. Include a summary of important responsibilities, jobs, and/or contributions of both you and the other person to the child.
- **The child’s needs.** Include details about your grandchild, such as whether he or she has problems at school, diagnosed special needs, etc. If you want custody, be sure to say that you are able to take custody of the child, and explain why you should be awarded it instead of the parent.
- **Parental responsibilities.** Include details about who did what in relation to your grandchild’s care such as: who made sure the child had good food to eat; who took the child to the doctor; and who the child is closest with. Give reasons for each detail.
- **Extended family.** It may also be important to describe how you will help your grandchild maintain relationships with other family members, especially if your grandchild is Aboriginal.
- **Finances.** Include financial details if you are applying for child support.
- **Family dynamics.** Include a summary of how well you and the other party communicate, if there have been incidents of physical or emotional abuse, and if your grandchild has been exposed to that abuse.
- **Access.** If either party is applying for access, include details about how you would like to see access arranged.
- **Other information.** Include other details important to your grandchild’s upbringing, such as religious or cultural ties and values.

If you are applying for, or responding to an application for custody or access, you may want to ask friends, neighbours, or family members to speak to the court as witnesses to support your case. In Provincial Court, you call your own witnesses.

If you reach an agreement before the court date

If you and the parent are able to reach an agreement before your court date, you can file either a written agreement or a consent order with the court. Once the agreement is filed, the court can enforce your agreement about custody, guardianship, access, and child support.

If you and the other party reach an agreement but you already applied for an interim order, advise the judge that you both intend for the order to be final. In this case, the order can be made final by consent. If you have any questions about written agreements or consent orders, ask the staff at your local court registry office.

Likely outcomes of a first appearance

The judge has a number of options to choose from at a first appearance hearing:

- **Family case conference:** The judge might order you and the other party to attend a family case conference.
- **Adjournment:** The judge might choose to adjourn (postpone) your case to a later date, so that you and/or the other party can consult further with your lawyers, attend a Parenting After Separation course (see page 11_ for more information), or try mediation.
- **Consent order:** The judge might make a consent order if you and the other person agree on the application, or if you come to an agreement at the first appearance hearing or through a family case conference.
- **Interim order:** The judge might make an interim order, a short-term court order that temporarily settles issues such as custody and guardianship until a final order is made.
- **Order:** The judge might make any of a number of other court orders, ranging from an order asking one of you to produce additional documents to a final order that settles your matter (see page 106 for more information).
- **Trial preparation conference:** The judge might order you and the other party (and your lawyers, if you have them) to attend a trial preparation conference. Similar to a family case conference, this is also an informal meeting before the judge, but this time the judge will focus on making sure you and the other person are ready to present your cases at a trial.
- **Trial:** The judge might send your case to trial – either directly, without a family case conference or trial preparation conference, or after them.

How to change or cancel a court order

When it comes to cases that involve a child, no final order is ever permanent. Either party may go back to court to ask for a final order to be changed – but only if the situation has changed significantly. If you disagree with the court order but the circumstances have not changed, you should instead appeal it (see the next page), or apply to cancel it. To change or cancel a court order, first get legal advice about how to proceed. Be aware that there are important time limits for filing an appeal.

The “Parenting After Separation” course

Parenting After Separation is a free, three-hour information session for BC parents – and other family members, such as grandparents, or guardians – who are dealing with parenting and support issues. The course explains the effects of separation on separating parents and their children and demonstrates effective ways to communicate and solve problems in parenting situations. Any separating parents can choose to attend this course.

For more information, see the [information about the program](#) on the Justice Education Society website or Ministry of Justice and Ministry of Children and Family Development's [JusticeBC](#) website.

In some communities, separating couples must attend Parenting After Separation sessions before they can go to court. The course is available in many communities and can also be taken online.

For more information about the online course, see [Online Parenting After Separation](#) on the Justice Education Society website.

Important: In urgent situations, you can apply to the court to skip or postpone this step.

If the course is mandatory where you live, Provincial Court registry staff will give you a referral. (For a list of Court Registries go to <http://www.clicklaw.bc.ca/helpmap/service/1014>)

When you've completed the course, you'll receive a certificate of attendance that you must file with the registry before they will set a first appearance date. Both parties must attend the course on or before the first appearance date. You can choose to attend a Parenting After Separation course if you want to (and one is available in your community), even if it's not required.

Tip: It's a good idea to find out as soon as possible if you have to go to a Parenting After Separation course – sometimes the waiting list to get into a course can be quite long.

You don't have to attend this course if you:

- have attended the course already within the past 24 months;

- aren't fluent in any language in which the course is offered;
- live in an area where the course isn't offered and you don't have access to the Internet to take the online course; or
- can't attend because you have serious health problems.

If one of these situations applies to you, go to your court [registry](#) and ask for the exemption form you can fill out and submit instead of the certificate of attendance.

How to appeal

An appeal is when a higher court reviews a lower court's decision to see whether the trial judge applied the law correctly when deciding a case. In other words, the appeal court does not make a decision about the facts of the case, but about whether there was a mistake in how the first judge used the law. It is not enough to appeal a decision if you are simply unhappy with it; your appeal must be based on the incorrect application of the law to your case. (It is rare, but you can also sometimes appeal because new evidence has come to light, or because the circumstances surrounding the original order have changed – but courts seldom allow it.)

Where you can appeal a court order depends on which court made the original order. See the chart below to figure out whether you can appeal your order, and if so, where the appeal will be heard.

Type of order	Where to appeal
Provincial Court, interim order	Under FRA: cannot appeal Under CFCSA: Supreme Court
Provincial Court, final order	Supreme Court
Supreme Court, final or interim order	Court of Appeal
Court of Appeal	Supreme Court of Canada (with permission)

If the appeal judge finds that the first judge who made the order made an error that affected the final result in your case, they may set aside (cancel) the order, make a new order, or send the case back to the first court for another hearing. If the appeal judge finds that the first judge did not make an error, the original order remains in place. Most often, the original court order also remains in effect while your appeal is being heard, though there are exceptions, and you can ask a lawyer about whether they would apply to your case.

You should be aware that an appeal can be complicated, time consuming, and expensive, and there is no guarantee that the judge will decide in your favour. Before you begin an appeal, you should talk to a lawyer to find out if it is worth the time and money it will take.

Important time limits

There are important time limits for appeals and you must file your appeal before the time limit expires. If you decide that you want to appeal an order, do not wait until the last minute. There are strict rules about how the days are counted for these time limits. You should get legal advice as soon as you can.

Useful resources

- **Legal Services Society Family Law website** - <http://www.familylaw.lss.bc.ca>
- **Justice Centres and Counsellors (Ministry of Attorney General)** - <http://www.justicebc.ca/en/fam/index.html>
- **JP Boyd's BC Family Law Resource** - <http://wiki.clicklaw.bc.ca/index.php/Jpboyd>
- **The Justice Education Society** Provides resource guides on how to represent yourself in court. - <http://www.justiceeducation.ca/>
- **Ministry of Attorney General (Justice BC – Family Justice)** - <http://www.justicebc.ca/en/fam/index.html>
- **Service BC**
Call Service BC to find out more about the services mentioned in this chapter. You can also ask to be transferred to another BC government service provider if you do not know the number or to avoid having to pay long distance charges for the call.

Phone: In Victoria: 250-387-6121 In Vancouver: 604-660-2421 Toll Free: 1-800-663-7867
Telephone Device for the Deaf (TDD): Vancouver: 604-775-0303 Toll Free 1-800-661-8773
Website: <http://www.servicebc.gov.bc.ca>

- **Dial-A-Law**
Listen to a series of audio clips on different legal topics, including how to represent yourself in court.

Phone: 1-800-565-5297 (toll-free)
Website: <http://www.dialalaw.org>

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.

Chapter 10

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.

Financial assistance and benefits

Parts of this section were taken from the Family Law in BC Website, created by the Legal Services Society. You can find it online at <http://www.familylaw.lss.bc.ca/>.

If you are raising a grandchild or a relative's child, you may be entitled to government benefits. The amount of help you can get to pay for the child's needs depends on whether you have a custody or guardianship or adoption order. It will also depend on whether your grandchild has been diagnosed with special needs.

This chapter will provide details on these benefits and links of where you might go for more information.

A great place to start if you are trying to figure out which benefits may be available to you is online at http://www.familylaw.lss.bc.ca/resources/fact_sheets/grandparents_benefits.php. This is an interactive version of this table, complete with links to more information.

Once you know which benefits you want to pursue, look at the next section for more specific information on the eligibility requirements and dollar amounts available per month or year.

After the benefits, there is a section in this chapter on child support, which you might be entitled to. You may also be eligible for help to pay medical expenses, and for tax breaks or refunds.

Finally, at the end of the chapter, you will find some useful tips for how to deal with the government workers at the agencies that give out these benefits.

How your benefits are affected

It is important to speak to a social worker and a lawyer before you get a custody order, sign an agreement to provide foster care, or adopt a child.

They can provide accurate information on options and how your benefits will be affected by different legal arrangements.

For some grandparents, the immediate changes that occur when they start to raise their grandchild have a significant impact on their employment or retirement situation. Some working grandparents have to leave their jobs because of the age or special needs of the child in their care. If you need employment or income assistance, contact the Ministry of Social Development and Social Innovation. <http://www.gov.bc.ca/sdsi/> (Formerly Ministry of Housing and Social Development)

The publication *[Your Welfare Rights](#)*, available from the Legal Services Society, is a good resource to learn about income assistance, and Persons with Disabilities assistance. The same organization also has a publication called *[When I'm 64](#)* that tells you about all of the different retirement benefits available to people over 60 in BC. For a free copy, see the Family Law website at <http://www.familylaw.lss.bc.ca/> or call the LSS Call Centre on 604-408-2172 for Greater Vancouver and 1-866-577-2525 for the rest of BC

Or call MCFD's After-Hours and Emergency Line:

Vancouver: **604-660-4927**

Elsewhere in the Lower Mainland: **604-660-8180**

Elsewhere in the province: **1-800-663-9122 (toll-free)**

If you still do not get the benefit after the reconsideration, you can appeal to the Employment and Assistance Appeal Tribunal (EAAT). More information on reconsiderations and appeals can be found in the LSS publication *[Your Welfare Rights](#)*. Many advocates across the province can help with appeals.

Extended Family Program through MCFD and Delegated Aboriginal Agencies.

This program provides financial and other supports to care providers of children out of the parental home, who do not have legal guardianship, and where the parent voluntarily contacts the ministry to initiate an application.

Extended Family Program info:

http://www.mcf.gov.bc.ca/alternativestofostercare/extended_family.htm?WT.svl=Body

Delegated Aboriginal Child and Family Service Agency contact info:

http://www.mcf.gov.bc.ca/alternativestofostercare/extended_family.htm?WT.svl=Body

Note: Previous programs – [Child out of the Parental Home](#) (on-reserve) and [Child in the Home of a Relative](#) were discontinued in 2010 although pre-existing files have remained eligible for grandfathered benefits.

Benefits based on other agreements with the ministry

If you have one of the following agreements with the ministry, you could be paid according to the foster care rates:

- a voluntary care agreement
- a restricted foster care agreement

When you make the agreement, you and the social worker will make a list of your grandchild's needs. Be sure that the agreement includes enough financial assistance and support services for you to meet those needs. You and the social worker decide upon the amount and type of support receive based upon the child's needs and available service unless you have a restricted foster care agreement.

Foster care rates

Child's age group	Monthly foster care rate
Per child age 11 and under	\$803.81
Per child age 12–19	\$909.95

The rates shown above are accurate for 2014 and could change at any time.

The ministry also provides relief/respite rates that range between \$35 to \$40 per day if you need to hire a babysitter or put your grandchild in daycare. Contact your social worker to learn the specific rate that applies to your grandchild.

To learn more about foster parent services, contact the BC Federation of Foster Parent Associations toll-free at 1-800-663-9999, or visit their website at <http://bcfosterparents.ca/> or the Federation of Aboriginal Foster Parents Association at 1-866-291-7091; or a local MCFD office

In addition, the ministry should pay for the following expenses: medical, dental, medical equipment, assessment and development services, and mental health services. You can also get details on these services from the ministry at:

www.mcf.gov.bc.ca/foster/pdf/health_supports_cic.pdf

Note: If you enter into a foster care agreement with the ministry, you must be kept informed (and included as a party to any legal proceedings) regarding any decisions the court makes about continuing care. If the court decides it is not in the child's best interests to return to their family, you and the ministry will need to make choices regarding on-going restricted foster care supports or longer-term legal custody arrangements under the Family Law Act (FLA). [Another longer term custody arrangement is an application for section 54.1 of the Child, Family and Community Service Act \(CFCSA\) – transfer of guardianship after a Continuing Custody Order.](#) This allows the ministry to continue to provide financial support to the care provider. (FLA guardianship does not allow for financial support).

It is a good idea to seek legal advice to know your options. [See Chapter 8 Getting legal help.](#)

Extended family agreement

If you are caring for your grandchild(ren) under an Extended Family Program (EFP) Agreement, monthly payments are as follows:

Extended Family Program (EFP) Agreement rates*

Child's Age Group	Monthly rate
Per child age 11 and under	\$ 554.27
Per child age 12-19	\$ 625.00

** The grandparent(s) may be eligible to receive the Federal Child Tax Benefit or the Child Disability Benefit, the Universal Child Care Benefit and the Provincial Family Bonus. The grandparents are responsible for contacting [the Canada Revenue Agency](#) in order to obtain information about eligibility for these benefits, as well as tax information related to receiving monthly maintenance payments.*

There are additional supports available for children who are cared for under an EFP Agreement, including medical, dental, optical benefits, as well as other supplemental benefits such as child care and respite.

Benefits available to adoptive families

When you adopt a child, you become the child's legal parent. As a result, you take on the responsibility for providing for the child, including financially.

As a result, you will no longer be eligible for most of the government benefits you might have been receiving up until this point. However, you will become eligible for a lot of new benefits. The benefits listed below are available to adoptive families. Read the information in the rest of this chapter to learn more about them and how to apply for them.

Federal assistance

- Income tax deduction for dependents (grandchildren)
- Child Disability Benefit*
- Canada Child Tax Benefit*
- Universal Child Care Benefit (for children under 6)*
- EI Family Supplement
- Adoption Expense Tax Credit

**The adoptive parents are responsible for contacting the [Canada Revenue Agency](#) in order to obtain information about eligibility for these benefits, as well as tax information related to receiving monthly maintenance payments.*

Provincial assistance

- Child Care Subsidy (if you have a low income or if the Ministry of Children and Family Development recommends you)
- BC's Children's Education Fund
- BC's Adoption Expense Tax Credit (harmonized with the federal Expense Tax Credit)
- Post-Adoption Assistance Program (see below for more information)

Other assistance

- your employer must provide the same health benefits for your adopted grandchild as it provides for birth children of employees
- your adopted grandchild has the same inheritance rights as a birth child

Assistance after adoption for children with special needs

Post-adoption assistance, also known as supported adoption, is available for families who adopt children with special needs through the Ministry of Children and Family Development. If an assessment by a ministry social worker determines you are eligible, you can get services such as respite care, counseling, psychotherapy, and special equipment.

If you are considering adopting your grandchild through the ministry, *ask for this assistance*. The ministry may not simply offer it to you. You will need to sign a written agreement with the ministry that outlines the post-adoption assistance your family will get. In some cases, this program will also give maintenance funding to families who are in financial need. To find out more, ask at your local ministry office.

Benefits available to those on income assistance

If you are collecting income assistance, you may be eligible for more benefits because the number of dependent children in your care will have increased. As you know, the amount you get in benefits depends on the number of dependents you have in your family unit. You should speak to your grandchild's social worker and an advocate to find out what different types of assistance you and your grandchild might be eligible for – everything from subsidized bus passes to medical care or a little extra money at Christmas. Following are some of the supplements and benefits you can ask about:

Family bonus top-up supplement

If you are receiving income assistance, [a temporary family bonus top-up supplement](#) may also be available as an advance for a delayed, cancelled, or suspended family bonus payment. Any retroactive child tax benefit or family bonus payments received from the federal government will be deducted from the income assistance cheque in the month it is received.

Health supplements

If you are receiving income assistance, you may also be eligible to get [various health supplements](#) to cover the cost of your grandchild's health care needs. Health supplements include supplements such as medical equipment and supplies; medical therapies; optical, dental, dietary, and drug/alcohol treatment coverage.

[School start-up supplement](#)

The ministry may give you extra money if you are on income assistance and caring for a dependent child.

Hardship assistance

If you are not eligible for income assistance or Persons with Disabilities (PWD) benefits, hardship assistance may be available to help your family meet their essential needs for food and shelter. Different rates apply depending on whether your family includes someone who is disabled. For the rates, see the links below:

Hardship Support Rate Table:

<http://www.eia.gov.bc.ca/mhr/hardship.htm>

Hardship Support Rate Table for Persons with Disabilities:

http://www.eia.gov.bc.ca/mhr/hardship_pwd.htm

Income and Exemptions

It is a good idea to review the Ministry of Social Development and Social Inclusion "[Income and Exemptions](#)" webpage or the publication [Your Welfare Rights](#) from the Legal Services Society to learn more about earned/unearned income, as well as any exemptions you may be eligible for if you want to apply for income assistance but you are worried that your income is too high.

Child Tax or Child Disability Benefits are not considered income. However, within this section there may be certain earned family unit income that is taxable, but where portions of it are

considered exempt. For example, if both grandparents are earning employment income but have a designated disability, they may be eligible to deduct \$750/month per person from their net income for tax purposes.

You can access the ministry's online resource at:

http://www.gov.bc.ca/meia/online_resource/verification_and_eligibility/

Housing assistance

For detailed information on housing assistance – both for homeowners and for renters – see the LSS publication [When I'm 64](#) or the provincial government's [BC Seniors Guide](#) (available for free and in multiple languages at your local library or MLA's office). There are many programs out there to help you – to pay your rent, to make repairs to your home, or to find a home – if you are 55 or older.

In addition, regardless of age, BC Housing helps more than 55,700 households with low to moderate incomes by providing them with subsidized housing. For information on their housing registry, visit <http://www.bchousing.org/providers/registry> or contact:

BC Housing: Housing Services branch

Lower Mainland: **604-433-2218**

Elsewhere in BC: **1-800-257-7756 (toll-free)**

Medical benefits

Healthy Kids Program

The Ministry of Social Development and Social Innovation (the ministry in charge of welfare) offers the [Healthy Kids Program](#), which extends basic dental and vision care to children up to 18 years of age who are from low-income and modest-income families. Families qualify for this program if they are receiving full or partial MSP premium assistance. For more information, contact MSDSI by calling 1-866-866-0800 (toll-free; press 4 and then 2).

Child Support

Much of the information in this section comes from JP Boyd’s Family Law Resource, available online at <http://wiki.clicklaw.bc.ca/index.php/Jpboyd>

There are generally five questions a court will consider when you apply for child support (also called maintenance):

1. Does the person seeking the order have a right to child support?
 - Yes. Grandparents who have guardianship of their grandchildren have a right to make an application for child support under the *Family Law Act*.
 - Also, you can make a claim for child support on behalf of the child even if you do not have guardianship (under the *Family Law Act*, Section 149(2)). Child support is something the child is legally entitled to, even though the parent pays it to the person caring for the child. Talk to an advocate or a lawyer for more information.
2. Is the child eligible for child support?
 - Probably. According to the FLA, children under the age of 19 whose parents have separated or divorced are eligible for support, as well as children over the age of 19 who require continued support because of a disability or because they attend school full-time are often still eligible as provided in Section 146 FLA.
3. Who must pay the child support?
 - The only people obligated to pay child support are: parents, guardians who are not parents, and step-parents (if they contributed to the support and maintenance of the child for one year). See the FLA, Sections 146 & 147 for more information.
4. How long should the child receive support payments?
 - Typically, support will end when a child turns 19, unless the child stays in school full-time. Sometimes, a court has also allowed an “adult child” to receive support, which means a person over 19 who is still dependent on their parents due to illness, disability, or another cause. How the courts address this situation varies from case to case.

5. How much support should the child receive?

- Generally, child support in Canada is calculated by the federal Child Support Guidelines, which looks at a person's income and the number of children that person is supporting in order to determine the amount of support. The guidelines apply to all parents who are not together, whether they were married, lived in an opposite- or same- sex common-law relationship, or never lived together at all.

How to apply for child support

Grandparents raising their grandchildren may claim child support, because parents still have a legal responsibility to provide for their children, whether they raise them or not. It can be more complex for grandparents to make their case for child support.

That means you will most likely need legal advice from a lawyer and/or an advocate to get support. One of the most common ways for grandparents to seek support is for them to ask a court to change an already existing order. For instance, there might already be a court order saying that a child's father has to pay the child's mother a certain amount of support money each month. If the grandparent is actually providing the child's care, the grandparent can ask the court to change the order so that the father pays the support money to the grandparent instead.

However, you should know that the grandparent's claim may cause the father to reconsider and apply to have the child's residence. If you go this route, the court may look into your grandchild's current parental arrangements and make changes that you would not like—for instance, the father could ask that the child live with him instead of the mother. A lawyer will be able to consider this possibility and other issues to help you determine the best course for pursuing child support. It is also possible that you will not need to go to court to get child support payments. If the parents agree, you may be able to get support payments that one parent used to pay to the other redirected to you by filing a consent order at the court registry, which means you will not have to have a court hearing. For more information on redirecting support payments, contact the BC Child Support Info line (see below). If either parent does not agree, you may have to go to court after all. As a grandparent, you will not be able to make an application under the *Divorce Act* for child support, since you are not a spouse. Instead, you must use the *Family Law Act*, which can be found at: <http://www.bclaws.ca/EPLibraries/> To read the Child Support Guidelines, see the following website: <http://www.justice.gc.ca/eng/fl-df/> and <http://www.justice.gc.ca/eng/fl-df/child-enfant/look-rech.asp> for child's support calculations. The Ministry of Attorney General's website on the topic: <http://www.justicebc.ca/en/fam/index.html>

Child support and taxes

If you are a grandparent receiving child support payments from one or both of your grandchild's parents, you do not have to report the child support payments as income. This means you do not have to pay tax on the child support payments. For more information, see the Attorney General's website at: <http://www.justicebc.ca/en/fam/index.html>

Collecting Child Support

The agency below can answer your questions about getting support payments redirected to you. *You should be aware that this support money may be deducted from some benefits you receive.*

BC Child Support Info line:

Lower Mainland: **604-660-2192**
Elsewhere in BC: **1-888-216-2211**

In addition, this agency might be able to help you if the parents stop honoring an agreement or a court order to provide support:

Family Maintenance Enforcement Program

Lower Mainland: **604-775-0796**
Greater Victoria: **250-356-5995**
Elsewhere in BC: **1-800-668-3637 (toll-free)**
Website: <https://www.fmep.gov.bc.ca/resources/>

Child Care Subsidy

The Child Care Subsidy is a monthly payment from the provincial government that helps families with low incomes pay for some of the costs of child care. You may be eligible for the program if you:

- are working and earning a low wage
- are looking for work
- are attending school or a job training program
- have child care recommended by the ministry*
- have a medical condition that interferes with your ability to care for the child, or
- are caring for a child attending a licensed preschool

**Note The child care subsidy and the child care surcharge are available to care providers without income testing (don't need to be low income) when a child is cared for under the Extended Family Program, as well as the out-of-care temporary and permanent orders.*

To apply for the Child Care Subsidy, ask your grandchild's social worker or another staff member at the ministry. You can also phone [Service BC](#)

Service BC Hours: Monday through Friday, 7:30am to 5pm Pacific Time.

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

Telephone Device for the Deaf (TDD) - Vancouver: 604-775-0303 Elsewhere in B.C.: 1-800-661-8773

Website: <http://www.servicebc.gov.bc.ca/>

Further information on the Child Care Subsidy Program is available on the ministry's website: <http://www.gov.bc.ca/mcf/>

Service Canada

Service Canada has agents ready to inform you about various federal government supplements and benefits you may be entitled to while raising your grandchild. For more information:

Telephone: **1-800-O-Canada (1-800-622-6232)** TTY: 1-800-926-9105.

Services are available from 8:00 a.m.–8:00 p.m., Monday through Friday.

Or visit your local Service Canada Centre. To find the location online, go to:

<http://www.servicecanada.gc.ca/cgi-bin/sc-srch.cgi?ln=eng>

Employment Insurance

The Employment Insurance (EI) program has a number of programs that you might be eligible for if your employment situation is disrupted by caring for your grandchild.

For more information on EI benefits, contact [Service Canada](#) at the number above.

Maternity/paternity benefits

If you are employed and must decrease your weekly earnings by more than 40 percent to care for your newborn, newly adopted, or hospitalized grandchild and have worked 600 insured hours within the last year (or since your last EI claim), you may be eligible for these benefits. You can receive them for a maximum of 50 weeks. Options are available for you and/or your spouse to claim these benefits, and may include reduced hours as opposed to full-time leave.

Complaints process

If you disagree with an EI-related decision, you have the right to appeal for reconsideration under the Employment Insurance Act. Information on how to file and prepare for an appeal for reconsideration can be found at <http://www.ae-ei.gc.ca/eng/home.shtml>. Advocates may be available to assist with your appeal.

Canada Pension Plan

The Canada Pension Plan has a number of benefits that you and your grandchild might be entitled to. For more information on CPP benefits, contact [Service Canada](#).

Survivor benefits

If your grandchild has a parent who is deceased, he or she might be entitled to collect that parent's CPP benefits as a survivor. The parent has to have made contributions for the minimum qualifying period. To be eligible, the child must be under 18, or 18–25 years old and attending a recognized educational institution. This benefit is paid at a flat rate; as of 2008, it was \$208.77 per month.

Disability benefits

If one of your grandchild's parents is disabled and receiving CPP disability, your grandchild might also be eligible for payments under the same program. The conditions and flat rate are the same as for survivor benefits (see the previous section).

Likewise, when you have contributed enough to CPP, if you were to experience a severe and/or prolonged condition that impacted your ability to work and you submit an application before your death, your grandchild could receive CPP survivor benefits on your behalf.

You should speak directly to a [Service Canada](#) agent to learn more about the benefits that may apply to your situation. Service Canada has a condition that a child may receive no more than two of the children's benefits – so for example, they could only receive survivor benefits from two relatives, or survivor benefits from one relative and disability benefits from another. See the previous page for Service Canada's contact information.

Early retirement plans

If you find that you need to retire early because you have taken on your grandchild's primary care, consult with [Service Canada](#) to learn about your monthly pension allotment and future employment plans if you intend to return to work. Those who apply and receive their CPP retirement pension can later return to work, but can no longer contribute to CPP.

Retirement contributions while caring for children

CPP has a “drop-out provision” you may want to explore further with [Service Canada](#). Months of low or zero earnings while caring for a dependent child under the age of 7 may be excluded from the contributory period. This provision means that, if you were unable to contribute as much as usual because you were caring for your grandchild, your later CPP benefits will not be lowered as a result. The provision applies to the person who received a family allowance benefit or those who are eligible for the Child Tax Benefit.

If a person continues to work and contribute to CPP after turning 65 and has higher earnings than previously, those earnings can be substituted for similar periods of earnings before the age of 65 (during child-rearing years). It will be important for you to have tracked your earnings and CPP contributions, so be sure to keep copies of your pay stubs and other documents.

Tax credits and federal benefits

Canada Child Tax Benefit

For more information on the credits described below, contact the [Canada Revenue Agency](#) (CRA) by calling Service Canada.

You can apply for the Canada Child Tax Benefit (CCTB) through the [Canada Revenue Agency](#); if you are eligible, you automatically get the BC Family Bonus and BC Earned Income Benefit. *While these payments must be declared on the CIHR Monthly Report, they do not affect CIHR payments.*

To apply, complete an application form and send it to the CRA. You can download a copy of the application form from the CRA website at <http://www.cra-arc.gc.ca/menu-e.html> or get one from a CRA office.

When you are ready to submit your application, you will need to show your passport and/or your Permanent Resident Card, Record of Landing (IMM 1000), or Confirmation of Permanent Residence (IMM 5292).

For information on how to apply for the Canada Child Tax Benefit, see <http://www.cra-arc.gc.ca/benefits/cctb/menu-e.html> or call 1-800-387-1193.

When you apply, you should bring (or send copies of) the following:

- proof of the child’s age, such as a birth certificate, baptismal record, or school document.
- proof of your relationship to the child. In many cases, the caseworker who handles your application can get this information from public records, but it is a good idea to bring in any documents you have. For example, if you have a birth certificate for the child showing his or her parents’ names, then you just need to establish your relation to one of the parents.

BC Family Bonus

This [benefit](#) is a tax-free payment to moderate-income families with dependent children. You get it automatically (without needing to apply) as part of the Canada Child Tax Benefit payment, which is calculated using the previous year's income tax return. If you are receiving income assistance but have not yet gotten the family bonus, a [temporary family bonus top-up supplement](#) may also be available from [Ministry of Social Development and Social Innovation](#).

Family Supplement

This program provides additional benefits for low-income families with children. If you are eligible for the Canada Child Tax Benefit through the Canada Revenue Agency, then you are eligible for this supplement. It makes sure your net family income is no less than \$25,921 per year.

Universal Child Care Benefit

This benefit is meant to help families pay for child care for children under the age of 6, and it is paid in installments of \$100 per month per child. To get it, you must first apply for the Canada Child Tax Benefit; for more information about that benefit or to apply online, call Service Canada or go <http://www.cra-arc.gc.ca/cctb/>.

BC Adoption Expense Tax Credit

If you adopt a child who is under 18, you can claim a tax credit of up to \$10,445 for eligible expenses related to the adoption. This can include the legal, travel, and administrative costs you paid during the adoption process, but only during the tax year in which the adoption was finalized. To learn more, go to <http://www.cra.gc.ca/> and type "adoption expense tax credit" into the search box.

Other Tax credits

If you find you have moved into a lower income bracket as a result of the changes in your life relating to caring for your grandchild, there may be other tax credits that you are now eligible for, such as [GST/HST refunds](#) and the [BC Low Income Climate Action Tax Credit](#). You might want to talk to a financial professional to take full advantage of all of the financial benefits, supplements, and credits that come with the complexities of raising your grandchild.

Benefits for children with special needs

Child Disability Benefit

If you care for a child under age 18 with a severe and prolonged physical or mental impairment, you are probably eligible for a tax-free payment of up to \$2,395 per year (\$199.58 per month) from the federal government.

To learn more about this benefit and whether the grandchild you are raising may be eligible, call 1-800-387-1193 or go their webpage at www.cra-arc.gc.ca/bnfts.

Post-Adoption Assistance

The [Adoptive Families Association of BC](http://www.adoptivefamilies.org) provides policy information about financial assistance:

Once you adopt, you are legally responsible for your grandchild in every way, including financially. You are only eligible for [Post-Adoption Assistance](#) if your grandchild has been diagnosed with special needs and your family has an income below a certain level.

This program has three parts:

- **specific service payments** – to purchase services for the child or the family. This can include counselling, specialized training, medical equipment, and other services related to the child's special needs
- **direct service support** – access to ministry services to address the child's or the family's needs, including such things as respite care, child care, or parenting classes
- **maintenance** – similar to foster care maintenance, but continuing after adoption

To get the assistance, you must negotiate an agreement with the ministry every two years until the child turns 19. For more information, see the Adoptive Families Association of BC's website: <http://www.bcadoption.com/>.

Special Needs Supplement

The Special Needs Supplement assists caregivers with the cost of securing a child care space (up to \$150) if their income is below a certain level. The Ministry of Children and Family Development provides this benefit along with the Child Care Subsidy.

Additional supports and resources may be available to help children with special needs succeed in child care settings – ask your grandchild's social worker or an advocate for more information.

To apply for the Special Needs Supplement, you will need to complete and submit the [Child Care Subsidy Special Needs form](#) along with your [Child Care Subsidy Application form](#) and [Child Care Subsidy Arrangement form](#). The [Special Needs Supplement \(Child Care Subsidy Needs\) form](#) must be **completed and signed** by one of the authorized professionals noted on the form

Supported Child Care

Supported Child Development (SCD) agencies contract with the ministry to provide a range of consulting and support services so that children with special needs from birth to 12 years of age can be included in regular child care settings.

When there is a lack of other community options for social inclusion, youth from 13–18 years of age may also receive SCD services on a case-by-case basis.

Approach the local SCD agency directly, or contact the local ministry office for information about additional resources. Further information is available on the government website

http://www.mcf.gov.bc.ca/spec_needs/scd.htm

How to interact with agencies that provide benefits

It can be intimidating to ask for benefits, even when you are entitled to receive the assistance. Here are a few tips to help you navigate the system and get the help that you and your family need:

- Be patient. You may encounter long waits on the phone or in person.
- Many agencies do not have the staff to take your calls immediately. The programs you need to deal with may have automated answering systems or answering machines.
- Save time when applying for any type of benefit by calling first and getting a list of all the information and papers you will need. Ask how long you may have to wait, so you can plan your time.
- Call during low-volume phone times. The volume and type of calls each agency receives will differ. It is often easier to get through to help lines during the early morning hours on Tuesdays, Wednesdays, and Thursdays. The busiest phone times appear to be during lunch hours (11:00 a.m.–1:00 p.m.) and on Mondays and Fridays.
- Keep a log. Always write down the name, title, and phone number of the person to whom you speak, and the name, address, and business hours of the agency. Record the time and date of your call or visit and the important details of your conversation for future reference (see below).
- If you make an appointment with an agency, plan to arrive 15 minutes before your meeting to fill out any forms they might need. Once the appointment is over, ask what the next step in the process will be and how soon you can expect a decision.
- It is difficult to get some services. Keep trying or ask for alternative place to try for a similar service.
- Work cooperatively with your caseworker. If difficulties arise that you cannot settle with the worker, ask to speak with the supervisor.
- If it is necessary, file a grievance. Most agencies have complaint procedures for difficult situations.

- Navigating the system can be exhausting and time consuming. Take a break to recharge yourself or ask for help from someone in your community, or from an advocate.

Each social service agency you deal with probably will have a different requirement and process, so you should expect to provide different kinds of information to each one when you first apply. To make the process as smooth as possible, prepare a list of questions before you contact an organization (see the sample below). Record the questions and the information you receive in a notebook so you can refer to it in the future.

A typical conversation might begin something like this: “Hello, I am raising my grandchild. I would like some information about programs that can help me provide him/her with _____ (this can be any type of assistance you need, such as help with meals, medical care, transportation, etc.). Can you please answer some questions for me?”

Sample questions for government agencies

- What types of services do you provide?
- How do I get an application?
- If I cannot complete the application by myself, can someone at your agency help me? If not, where can I go for help?
- What documents will you need to verify my identity (driver’s license, Social Insurance Card, etc.)?
- What documents will you need to verify my income (paycheque stubs, pension forms, OAS cheque stubs, etc.)?
- If I do not have the proof I need to verify my identity or income, can I give it to you later?
- If I do not have the documents, can someone at your agency help me get them?
- What documents will you need to verify my child’s identity (birth certificate, Social Insurance Number, etc.) and do they need to be originals?
- Will all of my documents be returned to me?
- What records are kept on file?
- Once I have completed the application, will I need to schedule an appointment to have it reviewed?
- How long can I expect to wait for my benefits to start?
- Can the application be done online?
- What is the name and number of someone to contact if questions come up?

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.

Chapter 11

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.

Arranging your Affairs

Your grandchild is living with you now and you have a few things to sort out. This section will walk you through how to get a hold of important documents and what documents you will need to travel. There is also a section on how to arrange your affairs to provide for your grandchild in case you become ill or die.

In many ways, the law has not caught up to the particular case of what happens to grandchildren when their grandparent-guardian becomes ill or dies, but there are still a few ways you can legally plan for your grandchild.

Important documents

It is important to have certain papers and documents so that you can apply for benefits, register your grandchild for school, and go on trips. Read below for information on how to get copies of important documents.

Birth certificates

Contact the **Vital Statistics Agency**:

Greater Vancouver: **604-660-2937**
Greater Victoria: **250-952-2681**
Elsewhere in BC: **1-800-663-8328 (toll-free)**
Website: <http://www.vs.gov.bc.ca/>

You can get more information about birth certificates and download an application form from their website at <http://www.vs.gov.bc.ca/>. The following is required in order to complete the application:

- name of the child;
- child's date of birth;
- child's place of birth;
- father's full name and place of birth;

- mother's full name and place of birth;
- full name, mailing address, phone number and signature of person making the request; and payment of the processing fee.

Only certain people are allowed to apply for birth certificates. See the application form itself for the requirements. If you do not meet them, contact the [Vital Statistics](#) office for help.

Social Insurance Numbers

Legal guardians can apply for a Social Insurance Number (SIN) for a child under the age of 12 by completing an application form and providing the required identification documents. Legal guardians must also provide proof of legal guardianship (a court order) in order to apply for the card.

The [SIN application form](#) can be obtained from a local [Service Canada](#) office or by downloading it from the Service Canada website for more information about what is required for identification documents go to:

<http://www.servicecanada.gc.ca/eng/sin/apply/someoneelse.shtml>

Applicants are strongly encouraged to apply in person at a local Service Canada office since the process is faster and easier. To find an office or to ask for more information on obtaining a SIN card, call the Regional Call Centre for Employment Insurance and Social Insurance Numbers at 1-800-206-7218 (toll-free).

Medical records

If you have not been the primary caregiver for your grandchild since birth, your doctor may not have all your grandchild's medical records. If so, your doctor can send a request to any previous physicians and request that they send the grandchild's records so that you have a more complete medical history on file. Likewise, immunization records can be forwarded to your doctor since this information is typically tracked by local health authorities.

If you are concerned that the medical files available are incomplete, you can help your doctor reconstruct the child's medical history by **making a list of all the illnesses and conditions** you can verify that the child has had. Also **list any information regarding the medical history of the birth parents**, including any medical conditions, substance abuse, or mental health problems the mother may have experienced during pregnancy.

Whenever you bring your grandchild to the doctor or dentist, have the person **make a note in your grandchild's file**, along the lines of "child brought in by grandparent." It can be helpful later on to be able to prove that you were taking care of your grandchild's needs.

Secure Certificate of Indian Status (status card)

The Secure Certificate of Indian Status (SCIS) is an identity document issued by Aboriginal Affairs and Northern Development Canada (AANDC) that confirms that the cardholder is registered as a status Indian under the Indian Act. Once a person gets this card, they can access a range of entitlements, programs, and services.

More information can be found at:

<https://www.aadnc-aandc.gc.ca/>

In the meantime, you can get information and an application for a status card by contacting the office in your region.

Aboriginal Affairs and Northern Development Canada

British Columbia Region Lower Mainland: 604-775-5100 Elsewhere in BC: 1-800-567-9604 (toll-free) Website: http://www.aadnc-aandc.gc.ca/
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Contact information for other regional offices is available online:

<https://www.aadnc-aandc.gc.ca>. Or by calling the toll-free number above.

Documents required for travel

It is extremely important for you to have certain important papers with you when you take your grandchild travelling. If you do not have certain papers, your vacation to Disneyland may look like child abduction to the authorities.

International travel

Before you travel internationally with a child, you should contact the embassy or consulate of all countries the child will be visiting to ask about entry requirements. Whether travelling alone or with an adult, each child (regardless of age) who travels abroad must have a valid passport and may also need supporting documentation. Generally, anyone younger than 18 is considered a child.

You can find general tips for travelling with children at

<http://travel.gc.ca/travelling/publications/travelling-with-children>

Because grandparents raising their grandchildren are in a unique legal situation, it is a good idea to talk with your lawyer or call the **Consular Affairs Bureau** before you leave: **1-800-267-6788 (toll-free)**.

- You will need the following documents to travel internationally with your grandchild:
- Your own valid passport and supporting documents
- Your grandchild's valid passport

Information about passports can be found at <http://www.passport.gc.ca/info/16-.aspx?lang=eng> Or call **Passport Canada: 1-800-567-6868 (toll-free)**

- Your grandchild's birth certificate showing the parents' names
- Any legal documents pertaining to custody and/or guardianship Status document from Citizenship and Immigration Canada if your grandchild has immigrated to Canada
- A death certificate if one of the parents or legal guardians is deceased
- Any additional documents required by the country you are visiting (check with the embassy or consulate of each destination country to find out what their requirements are)
- A parental consent letter (see the next page for a sample)

If you have **sole custody** of your grandchild under the **Divorce Act Order** or are the **only person with guardianship** under the **Family Law Act Order**, you may only have to show a **parental consent letter** if the parents have visitation rights. If you have joint custody or another person is a guardian of your grandchild, the other person with custody or guardianship will have to provide a consent letter. Be sure to bring any legal documents that explain your situation and call the Consular Affairs Bureau before you leave for further advice.

The letter on the next page is from the online resource for Foreign Affairs and International Trade Canada. You can download a copy in Microsoft Word, PDF, or Word Perfect format from <http://travel.gc.ca/travelling/children/consent-letter>.

You should adjust this sample to meet your specific situation and requirements.

Sample Consent letter

To Whom It May Concern:

I (We), _____ (full name(s) of the other person(s) with custody or guardianship) have _____ (lawful custody of/are guardians) of

Child's full name: _____

Date of birth (DD/MM/YY): _____

Place of birth: _____

Canadian passport number: _____

Date of issuance of Canadian passport (DD/MM/YY): _____

Place of issuance of Canadian passport: _____

_____ (child's full name), has my (our) consent to travel with

Full name of accompanying person: _____

Canadian or foreign passport number: _____

Date of issuance of passport (DD/MM/YY): _____

Place of issuance of passport: _____

To visit _____ (name of foreign country) during the period of
_____ (dates of travel: departure and return).

During that period, _____ (child's full name) will be residing
with _____ (name of person where child will be residing
in foreign country) at the following address:

Number/street address and apartment number: _____

City, province/state, country: _____

Telephone and fax numbers (work and residence): _____

Any questions regarding this consent letter can be directed to the undersigned at:

Number/street address and apartment number: _____

City, province/state, country: _____

Telephone and fax numbers (work and residence): _____

Signature(s): _____ Date: _____

(Full name(s) and signature(s) of custodial parent, and/or other person(s) with custody or guardianship)

Signed before me, _____ (name of witness), this _____ (date)

At _____ (name of location).

Signature: _____ (name of witness)

Travel within Canada

All passengers, traveling by air, 18 and over must have one piece of government issued photo ID or two pieces of government issued non-photo ID (one of which must show name, date of birth and gender).

For infants (under two years of age) a proof of age is required. (A photocopy is acceptable.)

All children between two and 12 years of age must be accompanied by an adult unless travelling as an unaccompanied minor (see next paragraph). We strongly recommend that all children travel with at least one piece of government-issued identification.

You should travel with a parental consent letter (see above).

If one of the parents or legal guardians is deceased you should have a death certificate.

Children traveling alone

If your grandchild is traveling alone by plane, you should arrange in advance with the airline for an escort to supervise your child from check-in through arrival. Double-check with your airline regarding their identification requirements and restrictions for unaccompanied minors (such as minimum ages and requirements for them to take non-stop flights only).

Note that airlines require a parent or guardian to stay at the airport until the flight has departed. The person greeting the child at the destination must have appropriate identification and authorization; otherwise, seeking to pick up the child could be interpreted as child abduction.

Wills

Creating a valid, clear, and easy to understand will is a big help to those you will leave behind when you die. A lawyer can translate your wishes and desires into language that a court will understand and correctly carry out. Find a lawyer who practices in the area of wills and estates or elder law. It is likely that a friend of yours can recommend one, so it is a good idea to ask around. You can also call the [Lawyer Referral Service](#), and they will try to set you up with a lawyer in your area or suggest places to look: 1-800-663-1919 (toll-free), 8:30 a.m. to 4:30 p.m., Monday to Friday.

To minimize your costs, you can plan out your thoughts and ideas before seeing a lawyer. That way, the lawyer will simply help you translate your wishes into legal wording, as opposed to starting from scratch.

There is also the option of going to see a notary public, a different sort of legal professional who can help you create a valid will, and sometimes at a lower price. To find a notary public in your area, you can look in the yellow pages or visit this website: <http://www.notaries.bc.ca/>. Notaries are not able to prepare more complicated wills which contain trusts.

Steps to making a valid will

If you decide to make your own will, be sure to follow the legal requirements set out in this section and to keep it in a safe place.

Generally, wills must satisfy the following requirements:

- Wills must be in writing. You need to be mentally capable of managing your own affairs, and you need to agree with the contents of a will at the time that you write it. If you are misled by someone or pressured when you put together the will, the courts may not consider it to be legal.
- The writer of the will, formally known as a **will-maker**, must sign at the end of the document. In addition, wills are often initialed on each page in order to show that you have read it and agree to the terms written there. If you are too sick or unable to sign the will, you can ask someone else to sign it in your name while you are present. This must be by your request.
- Your signature must be witnessed by two people besides yourself, both of whom must be over the age of 19. The two witnesses must sign the will in front of you and in front of each other.
- These two witnesses cannot benefit from the will. If you have someone witness your will who is named to inherit something from you, the law will not recognize that part of your will as legal, and that person will not be able to inherit anything from you.
- You should put a date on your will so that it is clear which version is the most recent.
- You should not typically have multiple wills. Each time you write a new one, it typically cancels out any that have come before and replace them entirely. (Multiple wills can sometimes be used with professional advice, for example, if you have assets in different countries.)

After you have made a will, it is possible to change it or make a new one at any time. You can create an entirely new will (for clarity's sake, it is useful to say in your new will that you revoke all of your old wills), or create something called a **codicil**, which is a document that alters some parts of your current will. To be legal, a codicil has to meet the same requirements as a will, although you do not have to use the same two witnesses as you did in your will and you must refer to the will you are changing (be sure to include the date the will was written on).

For more information on writing your own will, consult **Dial-A-Law** at <http://www.dialalaw.org/> (or by calling 604-687-4680 in the Lower Mainland or 1-800-565-5297

elsewhere in BC). You can also learn from the **People's Law School**; look at their website at <http://www.publiclegaled.bc.ca/> or call them at 604-331-5400.

What to include in a will

Wills do not have to follow a specific format in order to be legal, but they generally have instructions on the following topics:

Executor: A will should name an executor, someone who will handle your affairs on your behalf after you die. That person is responsible for carrying out the instructions you write in your will. Choose someone to be executor whom you trust to look after your affairs – someone you expect to live longer than you.

Estate: Write down what you want to have happen to everything you own when you die. Altogether, these things are called your estate. This includes your property, your possessions, your RRSPs (unless you have a beneficiary nominated on the RRSP), and anything you would like to pass on to your beneficiaries (people who will get something under your will).

It is important to try to divide your estate up entirely, but you do not have to know exact figures. It is fine to say things like, “My bank account will go to...” without knowing exactly how much money it will have in it when you die.

Guardianship: If you are the legal parent of your grandchild (i.e. the adoptive parent or are a guardian of your grandchild you should name someone who will become the guardian for your grandchild in your will.

Funeral desires: If you have a specific request about how you would like your funeral or burial to be, a will is a good place to lay these requests out. However, be aware that in many cases a will is not looked at until after a funeral has taken place. So you make your requests known to your family and community as well.

Where to store a will

Keep your will in a place where it will stay safe for a long time—where fire, water, and time cannot damage it and where no one can tamper with it. Often people keep their wills in safety deposit boxes in banks or at their lawyer's office. If you plan to keep your will at home, it is a good idea to put it in a brightly coloured envelope marked “WILL,” along with other important documents, so that your executor or family can easily find it when you die.

You can also register your will with the British Columbian Department of **Vital Statistics** to formally make it known that you have made a will. This is known as a “**Wills Notice**” and it identifies that a will has been registered, describes the person who has made the will, where the will is located, and the date of the will. This is not required by law, but it is a good idea. The

Vital Statistics nearest office can be found by looking in the blue pages that come after the white pages of your telephone book under “Government of British Columbia— Vital Statistics.” If you have any questions, the Vital Statistics website is helpful:

<http://www.vs.gov.bc.ca/wills/index.html>.

If a person dies without a will

If you [die without a will](#), there is British Columbia law that says who will get your property. However, it does so in a very impersonal way that does not take into account your family members’ individual needs and your wishes. Also, it could create a lot of trouble and expense for your family if you do not leave a will. For all of these reasons, it is best to write your own will so there is no question about what your wishes might have been.

Trusts

Creating a trust is a way to leave money or other property for someone who cannot manage it themselves. Trusts are usually created to ensure that children or disabled individuals can benefit under a will. For example, if you want to leave your house to a grandchild who is a minor, you write in your will that you, the settlor (the person creating the trust) ask either a certain company (a “Trust Company”) or someone you trust (called a trustee) to take charge of the property on behalf of your grandchild (called the beneficiary) until he or she reaches the appropriate age (a contingency age). This means that a beneficiary (your grandchild) can’t legally receive the money until they are 19. Sometimes people want the beneficiaries to receive the money when they are a bit older, for example 25. You often give the trustee the ability to advance funds from the trust to the beneficiary before they get to the specified age (eg 25), with the beneficiary being entitled to the balance of the trust fund at the specified age.

It is essential to get legal advice if you are thinking of establishing a trust in your will. It is best to find a lawyer who specializes in trusts, or a company that administers them. Several Trust Companies operating in British Columbia are listed on this website:

http://www.fic.gov.bc.ca/web_listings/TrustCompanies.aspx.

If you are thinking about providing for a disabled grandchild in your will, be sure to ask the lawyer or trust company you consult with about how the money you leave your grandchild will affect his or her eligibility for **Persons with Disabilities** (PWD) benefits. It may be that the gift in a will can be structured with a discretionary trust which will benefit the individual without eroding the benefits he or she may be entitled to receive from government.

In a typical discretionary trust, the Trustee is given the absolute authority (discretion) to decide how much of the income and how much of the capital, if any, will be paid to the beneficiary and at what time. Because the beneficiary cannot require the payment of the income or capital from the trust, as the law currently stands the trust is not considered to be of any value to the

beneficiary in calculating the beneficiary's assets under, for example, the *Employment and Assistance for Persons with Disabilities Act*. Also, because the Trustee will pay out only what the beneficiary needs, the beneficiary will not accumulate excess assets which could result in a loss of the disability pension.

If you are wanting to assist a disabled grandchild during your lifetime, you can consider an investment called a Registered Disability Savings Plan (RDSP) that is available for some disabled persons.

Your lawyer or trust company can advise you about your options. You can also look at the Ministry of Housing and Social Development's website for more information on the issue: <http://www.eia.gov.bc.ca/PUBLICAT/bcea/trusts.htm>.

Guardianship and wills

If you are the guardian of your grandchild, you can appoint someone to become the child's guardian in the event of your death. You can do this in your will or by using Form 2 from the Family Law Act Regulations.

You can also make a person a standby guardian of your child so that he or she takes over as the child's guardian in the event that you cannot continue to care for the child as a result of illness or senility. When the conditions set out in the Form 2 happen (the illness or senility), the standby guardian will begin to act as the child's guardian and must consult with you about parenting decisions for as long as possible.

Temporary guardianship

If you are the guardian of your grandchild and are unable to care for your grandchild for a short period of time – because of a hospital admission among other things – you can arrange for another person to have **temporary guardianship under Section 43 (2) of the Family Law Act (FLA)**. That person can then make arrangements for your grandchild's temporary care, education, and financial support.

This sort of Temporary authorization must be in the form provided in the FLA's Regulations and meet certain signing and written requirements. Unless the appointment is cancelled, or unless the appointment says otherwise, the appointed guardian continues as the child's guardian on the death of the appointed guardian, despite any other instruments made by the appointed guardian (such as in a will).

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.