



Community Legal Information Association of PEI

You and Your Grandchildren



902-892-0853 or 1-800-240-9798

www.cliapei.ca clia@cliapei.ca

This booklet is part of a series called “**Putting Your Affairs in Order At Any Age**”. Publications in this series include:

- Putting Your Affairs in Order At Any Age
- Wills
- Powers of Attorney
- Consent to Treatment
- Health Care Directives
- Moving to a Community Care Facility or Nursing Home
- New Relationships: Legal and Safety Concerns
- Preventing Abuse and Neglect of Older Adults
- You and Your Grandchildren

All of these publications can be found at www.cliapei.ca or can be ordered by calling Community Legal Information Association (CLIA) at 892-0853 or 1-800-240-9798. To view the acts mentioned in these booklets, go to www.gov.pe.ca, click on “Government”, “Supreme Court” and then click on “Statutes”. A list of the acts will come up in alphabetical order. You can also order paper copies from Island Information Service at 368-4000 or 1-800-236-5196. There is a small fee for paper copies.

You and Your Grandchildren

The bond between grandparents and grandchildren is a special relationship. Grandparents are in a unique position to offer love, advice and understanding as well as a sense of family history and home. Grandparents can provide emotional support and other help when parents are experiencing difficult situations.

The following stories are examples of situations people may experience in PEI. At the end of the booklet, we explain how the information helped.

Richard is worried. His daughter's marriage is ending and his grandchildren will be living with his son-in-law. Richard is concerned that he may not see his grandchildren in the future.

Carol disagrees with her son and daughter-in-law over many things about her grandchildren. She told them she doesn't like their plans for her grandchildren's education and she doesn't agree with their religion. Now Carol's daughter-in-law says she doesn't want the grandchildren to visit Carol because it upsets them. Carol thinks this is just an excuse to distance her from her grandchildren.

Martha's son died leaving her daughter-in-law, Nancy, with two children. Nancy has an addictions problem and Martha just learned that the child protection authorities are involved with Nancy. Martha thinks Nancy does not care for the children in the way they need. Martha wants her grandchildren to live with her.

Henry and Rita's daughter, Susan, is a single mother. Henry and Rita have gladly helped Susan and her son, Donnie. Susan has been given a scholarship to go to university in another province. They all agree that Donnie will live with Henry and Rita during the week while Susan is at school. Henry and Rita need to be able to take Donnie to the doctor, receive school reports and give consent to fieldtrips. They wonder what they should do.

Frank and Edith are excited about plans to take their grandchildren with them to Florida on vacation. They wonder how they can travel across the border with their grandchildren, since the parents won't be with them.

This booklet is designed for people like Richard, Carol, Martha, and the others. It gives general information about the law and the role of grandparents. We will meet them again at the end of the booklet.

The Law

Grandparents usually become concerned about their rights under the law regarding their grandchildren when there is a problem in the parents' relationship. In many cases, your relationship with your grandchildren does not end because the parents separate or divorce. In some cases, problems can occur, often around access or visiting, custody, or child protection issues. Under the law, all decisions about children are based on what is in the child's best interests.



The person who has day-to-day care of the child makes decisions about the child's upbringing. When the parents live together with the child, they both have custody. If they live apart, they can have joint custody or one can have sole custody. Sometimes other people, like grandparents, have custody of a grandchild or have access or visiting rights.

Access and visitation refers to the right of the child to spend time with the people who are important to him or her. This usually means the other parent, but it can include grandparents. In some cases, grandparents are involved when parent's visitation must be supervised. This means a grandparent or another designated person must be present during a parent's visits with a child.

Custody and access or visiting rights

Grandparents' rights are not specifically written in the law in Prince Edward Island. Sometimes disputes arise between the parents and grandparents over the grandchildren— for example, about parenting styles or religion. The law recognizes that custodial parents are the best people to make decisions for the upbringing of their children, as long as those decisions are in the child's best interests.

Visiting or custody problems

Problems in the parents' relationship sometimes lead to problems for grandparents. This can happen when the parents separate or divorce, or when one parent dies leaving grandchildren with the other parent. Grandparents in these circumstances often have concerns about future visits with the grandchildren, or they may want to have custody themselves.

Traditionally, visiting rights to grandchildren come from the parents and details are decided by the parents.



What you can do

If your grandchildren's parents are having difficulties that have an impact on you and your grandchildren, it is best for you to maintain a good relationship with the parents. It is important that you do not criticize either parent in front of the child.

If problems arise, you can try to negotiate a solution with the parents. Some people find the following approach helpful:

- Ask for a meeting with the parent or parents
- Be clear in your own mind about what you want to discuss
- Choose a neutral place and a time when you can talk without interruption but with other people around
- Speak clearly about what it is you want to negotiate
- Stay focused on the topic. Try not to bring up past problems
- Avoid blaming, judging and shaming
- Listen carefully to what the other person has to say, and try to understand the other person's point of view
- Let the parents know what is important to you and work on creative solutions together
- Make sure everyone knows what you have agreed to
- If you feel frustrated, vent with someone else, not with the parents



Another approach is to ask your son or daughter for help if he or she is negotiating a separation agreement that will include future arrangements for the grandchildren. Your son or daughter can ask to have visits with grandparents put into the written agreement. Both parents would need to agree.

Sometimes you need help to reach a solution. Mediation and collaborative law are options to try before you think about going to court.

For a list of mediators and collaborative lawyers, call CLIA at 892-0853 or 1-800-240-9798. CLIA also has pamphlets on mediation and collaborative law.

Any person, including grandparents, can apply to the court for visitation or for custody. You can make an application at any time. The application will go through a court process and a judge will decide based on what is in the best interests of the child. You will need the services of an experienced family lawyer.

If you don't know a lawyer, you can call the Lawyer Referral Service at 892-0853 or 1-800-240-9798.

Child Protection

Grandparents sometimes have their grandchildren living with them as a result of a child protection investigation. The legislation that outlines when and how child protection workers become involved with a child is called the *Child Protection Act*. A copy can be found at:

http://www.gov.pe.ca/law/statutes/pdf/c-05_1.pdf

You can also get a copy from Island Information Service at 1st floor Jones Building, 11 Kent St., Charlottetown (368-4000 or 1-800-236-5196).

When child protection workers become involved

Child protection workers become involved with a child when they believe the child is in need of protection.

Children are in need of protection if they are being neglected or abused. For example, it may be neglect or abuse if:

- the child is not receiving proper care, education, supervision, guidance, or control, or
- the child is living in a home with domestic violence, or
- the home is not safe.

Abuse of a child can be physical, mental, sexual or emotional. If child protection workers investigate and believe the child is safe but the family is having problems, they may arrange for services, counselling or parenting programs to help the family.

If the child protection workers assess that the child is in need of protection, they will work with the family to address the concerns. If the child protection workers assess that the child is in danger, they may remove the child from the home to a safe place. If this does not work or if the situation is serious, the child protection workers may apply to the court for temporary or permanent custody. This can involve several steps and court appearances. Grandparents may be called as witnesses.



If you wish to be involved in the court case or wish to have custody of your grandchildren, talk to child protection. You should get advice from a family law lawyer.

Reporting child abuse or neglect

If you are aware that your grandchild or any child is being abused or neglected, the law says you must report it to the Department of Community Services, Seniors and Labour (formerly the Department of Social Services) or the police.

To report child abuse, call Child Protection: 1-800-341-6868

Your call will be kept confidential and your identity is not revealed. Child protection workers will ask you questions and will investigate the home situation to see if the children are in need of protection. You will not be told the results of this investigation because the child protection workers cannot share confidential information.

How can I help?

If the child protection workers are involved with your grandchildren, make sure that the workers know of your relationship with them, and what you are prepared to do to help. You may wish to be part of the planning for the future well-being of your grandchildren. You may wish to offer to have them live with you.



The best thing for children is for their parents and grandparents to cooperate with each other and with the child protection workers. The child protection workers usually try to work with the parents first. They may favour the parents' views if there is a disagreement between grandparents and parents about what is best for the children.

If the grandchildren are with you, it is important to keep complete records of your involvement, especially if you hope to have custody of the grandchildren in the future. Your records can help your case.

In some cases, grandparents may have been involved with child protection workers when they were parenting their own children. It is important to show the social workers how you and your circumstances have changed.

Where to get help

If you have, or wish to have, your grandchildren living with you, it may be helpful to get legal advice. A lawyer experienced in family law can give you the information you will need to negotiate with a child protection worker. A lawyer can also help you navigate the justice system, which can be confusing.



Adoption

Sometimes a grandchild is adopted by the new spouse of one parent. Your grandchild may also be placed for adoption at the end of a child protection case. When a child is adopted, the law sets up a new family relationship for the adopted child. The child legally becomes the child of the adopting parent or parents. There are some situations in which you may no longer be the legal grandparent of your grandchildren. If your grandchild is adopted by your son or daughter's new spouse, you are still the grandparent. If your daughter-in-law's new spouse adopts your grandchild, you are no longer the grandparent. If your grandchild

is adopted by two new parents after a child protection case, you are no longer the grandparent. However many parents will continue to support a close relationship between their child and the former grandparents if it is in the best interests of the child. You can also go to court or use mediation or collaborative law to ask for visitation based on the history of your relationship with your grandchild.

If you want to adopt your grandchild, contact Adoption Services. Certain procedures will need to be followed. If child protection workers are involved, tell them that you wish to adopt your grandchild.

Travel with grandchildren

You will need to bring certain documents with you if you take your grandchild travelling. If you do not, your vacation may look like child abduction to the border authorities or the police. You may be stopped or turned back.



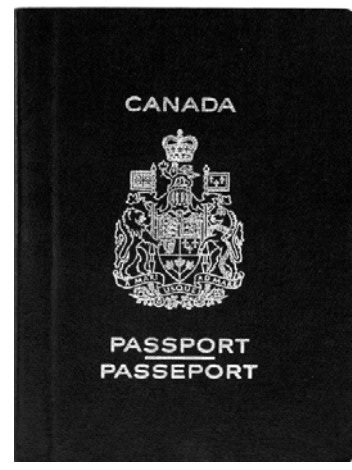
International travel

If you travel with your grandchildren without their parents, you will need first to gather information and all required documents. Contact the embassy or consulate of all countries your grandchild will be visiting with you to ask about their entry requirements. Also contact the transportation company to learn about its requirements. You can find helpful information about requirements for travelling with children by following the links at www.voyage.gc.ca . Each airline has information on its website about travelling with children.

Generally, for international travel, the following will be required:

- A valid Canadian passport for each grandchild
- Your own valid passport and supporting documentation
- Your grandchild's birth certificate showing the parents' names
- Any legal documents about custody and/or guardianship that explain the grandchild's situation, such as a divorce or custody order or a separation agreement
- A parental consent letter, signed by the parents, saying the child can travel with you - it is suggested that a lawyer notarize the consent letters. If one parent has custody of the grandchild, a consent letter may also be required from the parent who has visiting rights. A sample consent letter can be found at www.voyage.gc.ca
- A death certificate if one of the parents or a legal guardian is deceased
- Status document from Citizenship and Immigration Canada if your grandchild has immigrated to Canada
- Any additional documents required by the country you are visiting or the transportation company

You will also need to have health insurance for each grandchild, contact information for the insurer and each child's provincial health card.



Travel within Canada

You do not need to have a passport when you travel within Canada. If you are traveling with your grandchild, you may want to have the following with you:

- A birth certificate or other ID, such as a student card
- A parental consent letter, signed by the parents, saying the child can travel with you
- A death certificate if one of the parents or legal guardians is deceased
- The child's provincial health card



Children Traveling Alone

If your grandchild is traveling alone to visit you, arrangements should be made in advance with the airline, train or bus company. There may be a minimum age or a requirement for them to take non-stop flights only. Notarized consent letters and other documentation may be required.

An airline may require an escort to supervise the grandchild at the airport from check-in through arrival. There may be a fee for this. The airline may also 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.

Guardianship

Sometimes grandparents and parents agree that the grandchildren will live with the grandparents temporarily, while the parent is away for work or school or is ill. A guardianship agreement can give the grandparents the ability to make medical or other decisions for the grandchildren while the parent is absent. Some people write their own guardianship agreements. However, to make sure an agreement reflects what you want to do, it may be best to have a lawyer write out the guardianship agreement. It is important to state when the guardianship agreement ends.



Bequests

Often grandparents want to make sure grandchildren get certain treasured items when they die. The best way to make sure this happens is to include it in your will.



Now let's look at Richard, Carol, Martha, and the others ...

Richard decides to ask his daughter to include visits with the grandparents in the separation agreement she is negotiating with the children's father. In the meantime, Richard tries hard to put his grandchildren first and not to take sides. After getting help from a mediator and lawyers, both parents agree to do what is best for the children. They both agree that the relationship between the children and their grandparents is important, and that visits with grandparents should be included in their separation agreement.

Carol decides to get legal advice about her grandchildren's education and religion. She is surprised to learn that the parents have the final say, and that the lawyer thinks she might make things worse by taking her concerns to court. Carol gets some counselling and learns more about how she can resolve differences with the parents. She decides to apologize to the parents for expressing her views so strongly. She hopes this will lead to a better relationship with them and that soon normal visits with her grandchildren will occur.

Martha talks to the child protection workers involved with Nancy and her grandchildren. Everyone sits down together and agrees it would be best for the grandchildren to live with Martha for the time being. Nancy will enter a treatment program for her addictions problem and get counselling to help her with her parenting skills. Nancy and Martha will write out a guardianship agreement with the help of a lawyer.

Henry, Rita, and Susan see a lawyer. The lawyer drafts a guardianship agreement outlining their arrangement. The agreement gives Henry and Rita the authority to give medical consent for Donnie and to deal with Donnie's school until Susan has completed her studies. Susan gives a copy to Donnie's doctor and to his teacher at school.

Frank and Edith go online and learn more about what documents are required to travel internationally with their grandchildren. They talk to the airline and to the nearest consulate office. They print out information for the parents and a sample consent letter. The parents gather all the required documents, fill in the consent letter and have their lawyer notarize it. The grandchildren are very excited about the coming trip.

Notes

Caution:

The contents of these booklets are general information only and should not form the basis of legal advice. The contents are not a complete statement of the law or policy in these areas. Changes in law and policy occur frequently, so readers should check with CLIA or a lawyer for up-to-date information. For legal advice, contact a lawyer or call the Lawyer Referral Service at 892-0853 or 1-800-240-9798.

Date: October 2010

ISBN: 978-1-897436-30-1

Charitable Registration Number: 118870757RR0001

Funding for this project was provided by Human Resources and Skills Development Canada through the New Horizons Program. The views expressed do not necessarily represent the official policy of HRSDC.
