

Family Law Statutes Amendment Act, 2010 - Alberta, Canada
Grandchild/Grandparent Access

The Family Law Statutes Amendment Act at first glance appears to affect only a very small segment of the general population. It is important that we are not distracted by initial perceptions and that we more deeply examine a law that directly and indirectly affects nearly every person in the Province of Alberta. Every individual in the province is a grandchild. Many will one day become parents, and after that, grandparents. That being the case, the Family Law Statutes Amendment Act could impact every person in Alberta.

The trend in Canada and Alberta suggests an increased need and use of grandparent support. Specific statistics in this area from Statistics Canada which indicate this are:

Statistics for Grandchildren living with Grandparents with No Parents Present

Census Years	Region	Number of Grandchildren living with grandparents with no parents present	Census Years	Region	Number of Grandchildren living with grandparents with no parents present
1991	Alberta	5,345	1991	Canada	49,035
1996	Alberta	6,070	1996	Canada	53,105
2001	Alberta	7,000	2001	Canada	56,790
2006	Alberta	8,215	2006	Canada	65,135

The problems with the Family Law Statutes Amendment Act, 2010 are similar to the problems that existed with the historical legislation (Alberta Family Law Act).

They are as follows:

- (1) The onus is on the grandparent to show very difficult and intangible conditions to the Court.
- (2) The forum for the unfolding of the grandparental access to the grandchild is both adversarial and expensive. It would be helpful to consider processes that occur in other provinces such as Manitoba's Grand Relations Strategy, (see addendum #1). One may also consider the 1998 Canadian Federal Government's publication "For the Sake of the Children", (see addendum #2).
- (3) If the only means of resolution of this issue is to be through the courts, it is reasonable that a grandparent, seeking contact with a grandchild, be required to bring an application for access order before the court. It is illogical that leave of the court for such an application also be required when the grandchild is residing in an intact family unit vs. a broken family unit. Such discrimination to the grandparent based upon the status of the grandchild requires consideration.
- (4) To get a full picture of the value of the intergenerational relationships it is necessary to consider some of the social issues.

The following section will outline the benefits of the grandchild/grandparent relationship to children, parents and grandparents, as well as society in general. These benefits will be followed by suggested changes to the Family Law Statutes Amendment Act, that are consistent with commonwealth research and values as well as the Constitution Act 1982, Part 1, Canadian Charter of Rights and Freedoms. (Guarantee of Rights and Freedoms). The references for all points discussed below can be found at the end of this document.

Benefits to Children of Access to Grandparents

1. Grandparents provide a stabilizing force in times of family crises. This suggests less reliance on public resources such as Social Services, Children's Hospital and community counseling centers.
2. Research indicates that grandparents contribute to child development by ...; socializing with grandchildren; giving financial and emotional support; passing history, values and traditions to grandchildren. Relations with grandparents add qualitative and quantitative dimensions to the pool of adult role models available to children.
3. Children's relationships with their own grandparents affect their relationships with their own grandchildren two generations later.
4. In terms of developmental issues, researchers have found that the unconditional love that grandparents bestow upon grandchildren, aids in their self-esteem and efficacy. During adolescence, grandchildren find it beneficial to tap the wisdom and ancestry of grandparents to assist in ego development. This positive psychosocial role that grandparents play suggests that the family unit as a whole may rely less on public social resources to aid with developmental tasks.
5. From a long-term developmental perspective, continuity in relationships is helpful. In our current society, with high divorce rates, economic hardship and drug/alcohol abuse, grandparents may present as long term stabilizing forces in the young person's life. Again, this suggests less reliance on public resources to assist with fulfilling emotional needs.

Benefits to Parents When their Children Have Access to Grandparents

1. Grandparents as negotiators between parent and child, helping one to understand the other. In the long term, this suggests that the nuclear family system will rely less on public resources such as community counselling centers and social services and rely more on the extended family system.
2. Parental acceptance of children was higher and children tended to be more self-reliant in homes where mothers received child care aid from fathers and grandparents.

3. Where mothers had the help of other adults (possibly grandparents), children coped better and scored higher on cognitive tests than those children whose mothers did not have adult support.
4. ...supportive relationships that develop across generations ...can provide a resource for individuals and families to cope successfully with the stresses of contemporary life, by providing a cushion of support which helps absorb family pressures, diffuse social stresses and provide needed aid and assistance.
5. Researchers have discussed grandparents in terms of being a "stress buffer" ... "arbitrator"...(a) emotional and material assistance... (b) role models... behaviors of grandparents which fit into these categories.

All of the benefits to parents lead to the suggestion that the involvement of grandparents in the lives of children will result in less stress and reliance upon public resources.

Benefits to Grandparents Having Access to their Grandchildren

1. ...grandparents who participate and identify with the role of grandparent, develop an increased sense of well being and morale, in the face of otherwise demoralizing personal, social and material losses. This suggests that these grandparents are less likely to fall mentally, physically and emotionally ill and therefore are not a burden on the public health system.
2. A popular view of grandparents has been as historians; teaching values, ethnic heritage and family traditions through the "telling of stories" ...as "Kinkeepers" who maintain ties between generationally linked subsystems.
3. as...ones who have time in order to maximize resources available in rearing children. This suggests when grandparents are involved, it minimizes parents reliance on government and community resources.
4. ...the grandparent/grandchild relationship can function as a family resource for the entire family system.
5. ...conclusions gleaned from research... suggest that vital and significant relationships exist between grandchildren and grandparents. When a close grandparent/grandchild relationship has been formed in the child's early years an attachment quality is developed and nurtured throughout the life of each.

The next part of this document will outline some of the problems with the Family Law Statutes Amendment Act (Grandchild/Grandparent access). This document will conclude with suggestions for revisions to the Family Law Statutes Amendment Act.

FAMILY LAW STATUTES AMENDMENT ACT, 2010

CONTACT ORDER

SECTION (1) CHAPTER 16 – p. 15

35 (3) *A grandparent of a child does not require the leave of the court to make an application under this section if*

(a) the guardians are the parents of the child and
(i) the guardians are living separate and apart, or
(ii) one of the guardians has died,
and,

(b) the grandparent's contact with the child has been interrupted by
(i) the separation of the guardians, or
(ii) the death of the guardian.

CONCERN: A double onus is required from grandparents whose grandchildren live in an “Intact Family”, (parents/guardians residing together), and who wish access to their grandchildren (when access is denied). These grandparents have the additional burden of having to bring a “Leave” application before the court, before being granted permission to bring an “Application for Access” order forward. This “Leave” application requirement is considered to be an unnecessary and costly additional burden on these grandparents because they and their grandchildren are being treated differently.

Such an onus on these grandparents runs in contradiction to years of research describing the benefits to children, parents and grandparents when the grandchild/grandparent relationship is nurtured and protected.

Whether or not a child lives with one parent or both parents, that child has a right to the socio, emotional and psychological support found in their family – mentorship, history and wisdom. Their family is comprised of a larger structure.

It is important to note that the Canadian Charter of Rights and Freedoms indicates that everyone has the fundamental right to 'freedom of association'. Surely, the right to freedom of association protects the child's freedom to associate with grandparents.

It is understood that bills and laws are designed to reflect the values and beliefs of the citizens. The Alberta Family Law Reform Stakeholder Consultation Report, 2002, clearly indicates that grandchildren should have the right to have a relationship with their grandparents (p.18).

Many participants felt it was important for the well-being of children to have an opportunity to know their grandparents and other family members... In keeping with this Report, when parents or guardians deny access to grandchildren, they should be required to provide valid reasons for denying access.

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- ADDENDA: (1) Province of Manitoba’s “Grand Relations Strategy”, Canada – (Internationally acknowledged) News Release website: - <http://www.gov.mb.ca/chc/press/top/2006/11/2006-11-27>, or, www.gov.mb.ca/fs/childfam/family_conciliation.html
- (2) Parliament of Canada publication: “For the Sake Of the Children” – Report of the Special Joint Committee on Child Custody and Access, Dec. 1998. Available on the Parliamentary Internet: <http://www.parl.gc.ca>

Marilyn Marks, August, 2011
Founding Member,
Alberta Grandparents Association ,
Calgary, Alberta, Canada
e-mail: albertagrandparents@shaw.ca

Edited by
Roshni Daya, LL.B, Ph. D.
Registered Psychologist
Calgary, Alberta, Canada

(Jessica and Matthew B’s Grandmother)