

Fact sheet for grandparents

Decision-making responsibility & contact time



Are you a grandparent who has lost contact with your grandchildren because of something going on in the family, like a separation, divorce, or remarriage? Are you thinking of applying to the court for decision-making responsibility of or contact with your grandchildren?

There is no legal requirement for a grandparent to have contact with their grandchildren. It is usually up to the parents to allow visits and communication between their children and the grandparents, or any other extended family member. If parents are not allowing this to happen, you may need legal help to be able to visit or talk with your grandchildren.

If so, you should speak with a lawyer. Only a lawyer can tell you what your rights are, what to expect from the court process, or what you should or shouldn't do in your situation.

If you cannot hire a lawyer, consider other ways to get legal advice:

- get a lawyer through Nova Scotia Legal Aid (nslegalaid.ca)
- meet with a Summary Advice lawyer (contact your local family law court)
- access a lawyer through an Employee Assistance Plan, or a lawyer referral service (legalinfo.org)
- meet with a private lawyer for a consultation

Legal Language

'Decision-making responsibility' is a general term describing who has the responsibility for a child's care, who makes the decisions about the child's upbringing and development, and where the children will live. Grandparents must always ask for the court's permission (leave) when applying for decision-making responsibility of their grandchildren.

When you ask for leave, you will have to explain to the court why you are making the application, why you are asking to have care of your grandchildren, what connection you have (what role you play or have played in your grandchildren's lives), and why you should be given leave to make your application. A judge will decide whether or not to grant you leave, based on the facts of your case. If you are given leave, you will then address the main application for care of your grandchildren and any other issues such as parenting time for other important people in the child's life, and child support.



Parents are able to consent (agree) to an order or agreement to give decision-making responsibility of their child to a grandparent(s). When parents do not agree to give a grandparent decision-making responsibility, contact, or interaction with a child, a judge will decide.

A court's decision about parenting arrangements must be based only on the best interests of the child. Decisions like this are complicated and you should have legal advice to help you decide how to make your application to the court, and to understand what is important to a judge hearing your case.

'Contact time' is the time a child spends with someone other than a parent or guardian, under a court order or agreement. The time that a parent or guardian is with a child is called 'parenting time.' Generally, contact between a child and others such as grandparents, a stepparent, or other extended family members will take place during parenting time.

A court may make a contact order where it is not possible for contact to take place during a parent's parenting time, and it is the child's best interest to have contact with a grandparent.

Applications under the *Parenting and Support Act* permit a grandparent to directly apply for contact time. In your application you would likely be expected to explain your connection with the child, why you are unable to see the child during either parent's time with the child, and why it is in the child's best interest to have a contact order in place to maintain the connection. An order for contact time under the *Parenting and Support Act* may include in-person time, as well as other forms of contact such as telephone calls, texts or video chats.

A grandparent may also apply for a contact order under the *Divorce Act*. The process under the *Divorce Act* is different from the process under the *Parenting and Support Act*. Under the *Divorce Act*, the grandparent must ask the court for permission to make an application. This is called seeking 'leave' of the court. This means that

the grandparent seeking a contact order would first have to explain why it is in the child's best interest for the court to consider the application, and if appropriate the court would consider the application. The *Divorce Act* directs judges to consider if contact with the child could otherwise happen during one of the parent's time with the child.

A contact order under the *Divorce Act* may be in place for a specific period of time, or continue until changed, and include in-person time as well as other forms of contact such as telephone calls, texts or video chats. 'Interaction' means direct or indirect association with a child, but does not include contact time or parenting time. Interaction includes communications with a child other than 'in person' time - like, for example:



- phone calls, emails, or letters
- sending gifts or cards
- attending the child's school activities or extracurricular activities
- receiving copies of report cards or school photos
- FaceTime with the child

Applications under the *Parenting and Support Act* allow important people in a child's life to ask for interaction time with the child. Grandparents may ask the court for an interaction order. You would likely be expected to explain your connection with the child, why you are unable to see the child during either parents' time with the child, and why it is in the child's best interest to have an interaction order in place to maintain the connection. An order for interaction time under the *Parenting and Support Act* may include the ability to attend specified activities of the child; send gifts to and receive gifts from the child; communicate with the child whether orally, in writing or by other means; and receive from a person designated in the order, photographs of the child and information regarding the health, education and well-being of the child.

Under the *Parenting and Support Act* and *Divorce Act* the judge must look at whether contact time or interaction may happen with the help and support of a parent or guardian. In other words, is an order necessary in this case?

Try non-court processes

You may not need a court order if you can agree on visiting arrangements with the parents. There are services available that may assist you with getting an agreement without having to go to court, like negotiating with the help of a lawyer, collaborative law processes, or mediation.

About the court process

If you cannot come to an agreement with the parents and wish to apply to the court for an order for decision-making responsibility, contact time, or interaction, you can start your application through a lawyer. If you do not have a lawyer, contact the appropriate court and ask about how to start an application.

Which court?

These issues are usually dealt with in the Supreme Court (Family Division) nearest to where the children are living.

If your grandchildren do not live in Nova Scotia, contact the court nearest to where they live to find out how to make an application there. The laws in other places may be different.

Consider conciliation

If you have filed an application with the court, you may have the option of going to conciliation. Conciliation is also called 'court-based assisted dispute resolution (ADR)'. A conciliator can help the parties negotiate a settlement without having to go to court.

Need more information? Visit www.nsfamilylaw.ca

