



# THE CHILD'S RIGHT TO LOVE

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INFORMATION FOR GRANDPARENTS,  
RELATIVES AND OTHERS CLOSE TO THE  
CHILD



Alberta  
Civil Liberties  
Research  
Centre

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This booklet explains the law in general. It is not intended to give you legal advice on your particular problem. Because each person's case is different, you may need a lawyer.

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## TERMINOLOGY

**Access:** Previously, access was a term used in the federal *Divorce Act* which referred to the right of the child to spend time with the people who are the most important to the child. However, following the 2019 amendments to the *Divorce Act*, the term “access” is no longer used. The *Divorce Act* now uses terms such as “parenting, parenting time and contact”. However, the term “access” is still used in the Alberta *Child Youth and Family Enhancement Act* (Alberta).

**Contact:** The right of the child to spend time with the people who are the most important to the child. Contact is not just for the parent who does not have parental responsibility. The child has a right to see parents and grandparents and relatives and anyone else with whom the child has a close relationship. In some cases, contact may be “supervised.” Supervised contact means that a friend, family member or hired supervisor is present during visits with the child.

**Custody:** Following the 2019 amendments to the *Divorce Act*, the terms “custody” and “custody order” are no longer used. The *Divorce Act* language now features terms that focus on relationships with children, such as parenting time, decision-making responsibility and contact. The term “parenting order” replaces “custody order”.

**Decision-Making Responsibility:** The responsibility for making significant decisions about a child’s well-being, including day-to-day decisions and other factors such as their health, education, culture, language, religion and spirituality and significant extra-curricular activities. This is the term used in the *Divorce Act* and the *Child Youth and Family Enhancement Act* (Alberta).

**Contact Order:** The term “contact order” describes an order that sets out time for children to spend with important people who are not necessarily in a parental role, such as grandparents. A decision about whether to grant a contact order will consider the best interests of the child. This term is used in the *Divorce Act* and *Family Law Act*.

**Consent Order:** An order of the Court that is agreed-upon by the parties and submitted to a judge for review and signature.

**Court:** The Alberta Court of Queen’s Bench or the Provincial Court of Alberta

**Kinship Care:** A program in the Alberta government which allows children currently in the care of Children’s Services to live with their extended family members, such as grandparents.

**Private Guardianship:** A person who applies to the court for a private guardianship order for a child who is in the custody of Children’s Services, or who is the subject of a temporary guardianship order, or permanent guardianship order.

**Guardian/guardianship:** A guardian of a child has certain rights, responsibilities and powers with respect to that child. When there is more than one guardian of a child, guardians are expected to co-operate with one another and may enter into an agreement with one another regarding the exercise of powers, responsibilities and entitlements of guardianship.

**Adoption:** Adoption is a legal process by which an adult becomes the child's legal guardian. For example, the parent's new spouse may adopt the child. In Alberta, the *Child Youth and Family Enhancement Act* governs adoption processes.

## INTRODUCTION

### WHO IS THIS BOOKLET FOR?

This booklet is for people who want to maintain a relationship with a child. In Alberta, a child is any person under the age of 18.<sup>1</sup> The child may be your grandchild, niece or nephew, or the child of a friend or former partner.

You are most likely to need this information when the child's parents end their relationship.

Your relationship with the child does not end because the child's parents separate or divorce. In many cases, your relationship with the child will continue as before. However, if issues arise, this booklet will help you decide how to deal with them.

This booklet describes what the law says about the child's right to maintain a relationship with you, and to enjoy your love and affection. It also describes how you can make legal arrangements to ensure that these rights are protected.

Here are some typical examples of situations where this booklet may help:

- My son's marriage is ending. His wife will have custody (parenting time) of /with the children. I want to make sure that I can go on seeing my grandchildren.
- Four years ago, my daughter's marriage broke up. The children's father has remarried and has custody (parenting time) of/ with the children. His new wife says she does not want me visiting the children because, she says, I "upset them."
- My nephew's wife has sole custody of their son. She will not let me see him because my nephew just moved to British Columbia with his new girlfriend and has stopped paying child support.
- I have been a Big Sister for eight years and my Little Sister is the most important person in my life. She is an adolescent and in daily conflict with her mother. Her mother is now saying that I cannot see my Little Sister because I have "taken sides" against the mother.
- My son died, leaving my daughter-in-law with two children. She has major substance abuse problems and does not care for the children in the way they need. I want them to come and live with me.

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<sup>1</sup> *Family Law Act*, RSA 2003, c F-4.5 s. 1(c) (*Family Law Act*)



## **CHILDREN NEED ALL THE LOVE AND SUPPORT THEY CAN GET**

Children possess a number of human rights, which have been recognized under the international human rights treaty, the *United Nations Convention on the Rights of the Child*.<sup>2</sup> Canada has ratified this treaty, signalling Canada's intention to adhere to the principles set out in under it. Among the principles and rights contained under the treaty, the significance of the best interests of the child is of particular importance in relation to this booklet. Under article 3 of the treaty, the best interests of the child are to be a primary consideration in all actions concerning children.

In Canadian law, the best interests of the child hold special significance in family law proceedings. A number of factors are relevant in assessing what the best interests of the child, with one of these factors including the strength of the child's relationship with parents, siblings, grandparents and other important persons in the child's life.<sup>3</sup> Thus, where it is in the child's best interests, it is important for children to maintain their relationships with grandparents, relatives, and other people with whom they have a close relationship. Maintaining or re-establishing your relationship can be vital to the children's social, emotional, and intellectual development and well-being. Children need all the love and support they can get to grow up with a strong sense of their own self-worth.

## **HOW THIS BOOKLET IS ORGANIZED**

This booklet is divided into five parts.

- Chapter 1 provides an overview of the federal and Alberta law, and provides information on the type of legal arrangements that can be made under the legislation.
- Chapter 2 provides an overview of the Alberta law surrounding child protection decisions, and the types of arrangements that can be made under the child protection legislation.
- Chapter 3 examines the issue of alienation and provides examples of how this can be avoided and addressed.
- Chapter 4 provides information on different supports you can seek out for further assistance.

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<sup>2</sup> United Nations, *Convention on the Rights of the Child*, 20 November 1989, Art 3 (entered into force 2 September 1990).

<sup>3</sup> *Divorce Act*, RSC 1985, c 3 (2<sup>nd</sup> Supp) s. 16(3)(b) (*Divorce Act*); see also *Family Law Act* s.18(2)(b)(vii).

## **CHAPTER ONE – THE LAW**

### **LEGISLATION**

It is important to understand that specific legislation may apply in different situations. For example, parents who are married can use both the *Divorce Act* and *Family Law Act* in addressing parenting, whereas parents who are not married, can only utilize the *Family Law Act*. It is therefore essential that you are clear on what legislation is relevant in your situation. If you are unsure of what legislation applies in your situation, you should contact a lawyer (see Chapter 4).

#### ***Divorce Act***

The *Divorce Act* is a piece of federal legislation. This act governs the legal process of divorce, including parenting arrangements, child support and spousal support. Under the *Divorce Act*, anyone is able to make an application for a contact order with a child (subject to permission from the court if necessary).<sup>4</sup>

#### ***Family Law Act***

The *Family Law Act* is provincial legislation that governs family matters in Alberta. This includes parenting arrangements, guardianship orders and other matters. Under the *Family Law Act*, people who apply for decision-making responsibility for a child must be a guardian; those who may have contact include guardians, other relatives of the child, and other people who have a close relationship with the child.<sup>5</sup>

#### ***Child Youth and Family Enhancement Act***

The *Child Youth and Family Enhancement Act* is provincial legislation which governs what happens when a child is being abused or neglected and is in need of intervention. This Act allows for agreements about access and custody of a child while the child is in care. These decisions can include grandparents and other relatives of the child, as well as other people who have a close relationship with the child.<sup>6</sup>

*Note: If the child lives in a different province, it is wise to consult with a lawyer to find out how to proceed, as provincial family and child protection legislation can differ.*

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<sup>4</sup> *Divorce Act* s.16.5.

<sup>5</sup> *Family Law Act* s.5.

<sup>6</sup> *Child Youth and Family Enhancement Act*, RSA 2000, c C-12 s.14 (*Child Youth and Family Enhancement Act*).



## BEST INTERESTS OF THE CHILD

Under the legislation, the best interests of the child is a primary consideration in determining contact, guardianship and parenting orders.<sup>7</sup> In determining the best interests of a child, a number of factors can be considered.

These factors include (but are not limited to):

- the child's physical, emotional and psychological safety, security and well-being;
- the ability of each guardian to care for the child;
- the love, affection, and similar ties that exist between the child and each parent, and between the child and others who are important in the child's life
- the health and emotional well-being of the child (including how stable the child's home situation is);
- education and training for the child; and
- the wishes of the child, especially if the child is over 12 years of age.

## TYPES OF ARRANGEMENTS

In the event of a separation, divorce, death, or remarriage, it may be necessary for you to enter an arrangement with the child's guardians and/or caregivers to allow for your continued contact with the child. There are a number of different arrangements that can be made between you and the child's parents/guardians or applied for through the courts.

## CONTACT ORDERS

Under both the *Divorce Act* and the *Family Law Act*, persons other than the parent of a child can apply for a contact order.<sup>8</sup> In some instances, you will need permission from the court to make an application for a contact order.<sup>9</sup>

However, under the *Family Law Act*, grandparents may apply for a contact order without permission from the court if:

- the guardians are the parents of the children and are living separate and apart, or, one of the guardians has died; and

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<sup>7</sup> *Family Law Act* s.18(1); *Divorce Act* s.16(1).

<sup>8</sup> *Divorce Act* s. 16.5, FLA s 35.

<sup>9</sup> See *Divorce Act* s.16.5(3) and *Family Law Act* s.35(2).

- the grandparents' contact with the child has been interrupted by the guardians' separation or death.<sup>10</sup>

If you need permission from the court, you will need to make an application seeking permission from the court to apply for a contact order. In deciding whether or not to grant permission, a judge will consider the best interests of the child, including the significance of the relationship between you and the child and whether a contact order is necessary to facilitate contact between you and the child.<sup>11</sup>

If permission is granted, you may proceed with an application for a contact order. In determining whether a contact order should be granted, a judge will consider a variety of factors, including:

- whether contact between the applicant and the child could otherwise occur;
- whether a contact order is in the best interests of the child;
- whether the child's physical, psychological, or emotional health may be jeopardized if contact is denied; and
- whether the guardians' denial of contact between the child and the person for whom contact with the child is proposed is unreasonable.<sup>12</sup>

If a contact order is granted, the court may provide for contact to occur in the form of visits, oral or written communication or any other method of communication, set terms and conditions on the contact, the length of the order and any related matter as the court considers appropriate.<sup>13</sup>

## GUARDIANSHIP

A guardian of a child is an adult who is legally responsible for the care of that child. A guardian has decision-making responsibilities that the guardian must carry out in the best interests of the child.

A guardian's powers and responsibilities can include:

- making day-to-day decisions affecting the child;
- deciding where the child will live;
- decisions about the child's education, cultural, linguistic, religious, and spiritual upbringing;
- consenting to health-related treatment for the child;
- ensuring the child has the necessities of life;
- nurturing the child's physical, psychological, and emotional development; and
- guiding the child towards independent adulthood.<sup>14</sup>

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<sup>10</sup> *Family Law Act* s.35(3).

<sup>11</sup> *Family Law Act* s.35(4).

<sup>12</sup> *Divorce Act* s.16.5(4); *Family Law Act* s.35(5).

<sup>13</sup> *Divorce Act* s.16.5(5)-(6); *Family Law Act* s.35(6)-36.

<sup>14</sup> *Family Law Act* s.21.

As a guardian, you are entitled to be informed and consulted on significant decisions affecting the child and to have sufficient contact with the child to carry out your responsibilities and powers as a guardian.

These powers, responsibilities and entitlements may be subject to a parenting order. If sharing guardianship of a child with another guardian, you must share information with the other guardian and cooperate with them.

Under the *Family Law Act*, you can apply for guardianship of a child if:

- you have had care and control of the child for more than six months; and
- you or the child reside in Alberta.<sup>15</sup>

A Court will not grant a guardianship order without the consent of each guardian of the child, the child (if they are 12 years or older) and the proposed guardian.<sup>16</sup> However, a Court may waive either of these requirements if the judge determines there are good reasons for doing so.

In considering a guardianship order application, the judge will consider several factors, including:

- the best interests of the child;
- whether you are a suitable guardian; and
- your ability to exercise the powers, responsibilities, and powers of guardianship.<sup>17</sup>

The court may require you to provide a report prepared by a qualified professional, regarding the above criteria.

If you decide to pursue an application for a contact order or guardianship order, the Alberta Courts website offers links to the different forms you may need in making an application.

The link to the Provincial Court forms can be found [here](#).

The link to the Court of Queen's Bench forms can be found [here](#).

Although you can represent yourself in court, due to the complexity of issues, seeking advice and assistance from mediators or lawyers is advisable. For more information, please see Chapter 4.

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<sup>15</sup> *Family Law Act* s. 23.

<sup>16</sup> *Family Law Act* ss. 24(1) and 24(2).

<sup>17</sup> *Family Law Act* s. 23(3).

## CHAPTER TWO – CHILD PROTECTION DECISIONS

### IF A CHILD IS IN NEED OF PROTECTION

There are special rules if a child is being abused or neglected and is in need of intervention. These rules are found in the *Child, Youth and Family Enhancement Act*.

If you think the child (or any child) is being abused or neglected, you have a legal duty to tell the Ministry for Children’s Services (the Ministry). Phone the local Child and Family Services office by dialling **310-0000** and getting their contact information. Ask to speak to a child welfare worker. Or call the **Child Abuse Hotline, toll-free: 1-800-387-5437**. The social worker will listen to your concerns and ask you some questions.

**If you believe a child is in immediate danger, call 911.**

If the Ministry becomes involved, make sure the Ministry knows you wish to be part of planning for the child’s well-being. You may have a role to play at this stage in supporting the safety and well-being of the child. The Ministry will work with the parents, with you, and with others who are close to the child to develop a “plan of care.” The plan of care describes what is going to happen to protect and support the child.

If the social worker believes the child is safe but the family is having problems, the social worker may implement a Family Enhancement Agreement and arrange for services, counselling, or parenting programs.<sup>18</sup>

If the child needs protective services but is not in immediate danger, the social worker will take whatever measures are least disruptive to the child.

In some situations, the social worker may ask a judge for a supervision order that allows the Ministry to supervise the child’s care.<sup>19</sup> Under a supervision order, the child will remain in their guardian’s care, but the Ministry will supervise the child through frequent visits and other terms as ordered.

If the social worker believes the child is in immediate danger and there is no other way to keep the child safe, the Ministry may remove the child from the home.

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<sup>18</sup> *Child Youth and Family Enhancement Act* s. 8.

<sup>19</sup> *Child Youth and Family Enhancement Act* s. 28.

## IF A CHILD HAS BEEN TAKEN INTO PROTECTIVE CARE

“Taken into care” means that the Ministry has removed the child from the home for the child’s safety.

Removing the child from the home is done via an Apprehension Order.<sup>20</sup> An apprehension order authorizes the Ministry to apprehend the child and take the child into their care.

When a child is taken into care, you should make the Ministry aware of your relationship with the child and your intention to be “a party” to the decisions. This means you have a role to play in the decisions affecting the child.

When the Ministry removes a child from the home, they will often try to place the child with a member of the immediate family, such as the other parent or an older sibling. Their second choice will often be to place the child with a member of the child’s extended family, such as grandparents, aunts or uncles, etc. It is important to let the Ministry know if you available this purpose.

You may be granted access or custody as part of a custody agreement with the Ministry if that is in the child’s best interest and is consistent with the plan of care for the child.

“Service plan” or “plan of care” is the term the Ministry uses for the arrangements that are made about the child. If the child is 12 or over, the child’s wishes are considered when children’s services develops the plan of care.

## WHAT HAPPENS AFTER A CHILD IS TAKEN INTO CARE

Following an apprehension order, if the child has not been returned to the guardian’s care, the Ministry will make an application for:

- a supervision order; or
- a temporary guardianship order; or
- a permanent guardianship order; or
- an order returning the child to the guardian’s care.<sup>21</sup>

A temporary guardianship order may be granted if it is determined that a child is in need of intervention and that they are at risk if they remain in the care of their current guardian.

Under a temporary guardianship order, the Ministry becomes a joint guardian of the child with the child’s current guardians.<sup>22</sup> Temporary guardianship orders will only last for a total of period 6 months.<sup>23</sup> However, these time periods can be extended by the Court if there are good reasons for doing so.

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<sup>20</sup> *Child Youth and Family Enhancement Act* s.19.

<sup>21</sup> *Child Youth and Family Enhancement Act* s. 21(1).

<sup>22</sup> *Child Youth and Family Enhancement Act* s. 31(2).

<sup>23</sup> *Child Youth and Family Enhancement Act* s. 33(3).

A permanent guardianship order may be granted if it is determined that a child is in need of intervention or is the subject of a temporary guardianship order and the safety, security or development of the child cannot adequately be protected if the child remains with or is returned to the child's guardian. Under a permanent guardianship order, it is not anticipated that the child could or should be returned to the custody of the child's guardian within a reasonable time.<sup>24</sup> Under a permanent guardianship order, the Ministry will become the sole guardian of the child.

After an application is made for a temporary guardianship order or permanent guardianship order, the Ministry must make an application for custody of the child until the application for a temporary guardianship order or permanent guardianship order is withdrawn or disposed of.<sup>25</sup> If the custody order is granted, the court may include terms for access between the child and the guardian or any other person with whom the child has a significant relationship.

Included in the guiding principles of the legislation, is the recognition that Indigenous peoples and communities should be involved with respect to the planning and provision of services to and decisions respecting Indigenous families and their children.<sup>26</sup> Thus, when a child is Indigenous, additional criteria and factors will be considered. For example, a court will consider the importance of respecting, supporting, and preserving the child's Indigenous identity, culture, heritage, spirituality, language, and tradition.<sup>27</sup>

## **TYPES OF ARRANGEMENTS**

When the child is taken into care, you can make an application to the court or enter into an agreement with children's services for access, care of or guardianship of the child. Ultimately, the court in making a decision regarding the above orders, will consider the best interests of the child.<sup>28</sup> In making a decision about what arrangement may be best suited for you and the child, you should consult with a lawyer

## **ACCESS AGREEMENTS**

If a child is subject to a temporary guardianship order or permanent guardianship order, you may enter into an access agreement with the Ministry if you have a significant relationship with the child.<sup>29</sup> If agreed to, the access agreement can include terms related to visits or other access between you and the child, and matters relating to the guardianship of the child. It should be noted that no agreement will be made relating to a child who is 12 years of age or older without the consent of the child.<sup>30</sup>

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<sup>24</sup> *Child Youth and Family Enhancement Act* s. 34.

<sup>25</sup> *Child Youth and Family Enhancement Act* s. 21.2.

<sup>26</sup> *Child Youth and Family Enhancement Act* s. 1.1.

<sup>27</sup> *Child Youth and Family Enhancement Act* s. 2(1)(c),

<sup>28</sup> *Child Youth and Family Enhancement Act* s. 2(1).

<sup>29</sup> *Child Youth and Family Enhancement Act* s. 14(1).

<sup>30</sup> *Child Youth and Family Enhancement Act* ss. 14, 34(10).



## ACCESS ORDERS

If a child is subject to a temporary guardianship order or permanent guardianship order, the court may include terms in these orders providing for access between the child and persons with whom the child has a significant relationship.<sup>31</sup>

## KINSHIP CARE

Kinship care is an Alberta program which allows for children taken into the care of the Ministry to live with their extended family. Under the program, kinship caregivers receive financial support and training.

To be a kinship caregiver, you must:

- be at least 18-years old;
- willing to have the child placed in your home; and
- understand and be willing to proceed with the approval process.

If a child is taken into care, you may be contacted by a children's services caseworker about providing kinship care, or you may reach out to the caseworker. The caseworker will discuss with you the additional requirements that may be needed in order to become a kinship caregiver.

It is important to note that if you become a kinship caregiver for the child, this does not mean that you become that child's guardian. The Ministry will continue to be responsible for the child and major decisions affecting the child, but will delegate some day-to-day decision making powers to you via a Delegations of Power document. This document will outline what powers you, as a kinship caregiver are entitled to make.

## PRIVATE GUARDIANSHIP ORDERS

If a child is taken into care and you would like to become the child's guardian, you can make an application for a private guardianship order.

Unlike a guardianship order under the *Family Law Act*, private guardianship only applies to children who are in the custody of the Ministry, or subject to a temporary guardianship order or permanent guardianship order.<sup>32</sup>

In order to apply for private guardianship, the following criteria must be met:

- the child must be in the custody of children's services, or subject to a temporary guardianship order or permanent guardianship order;

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<sup>31</sup> *Child Youth and Family Enhancement Act* ss. 31(4), 34(8).

<sup>32</sup> *Child Youth and Family Enhancement Act* s. 52.

- include in their application a home study report outlining:
  - the suitability of the applicant as a guardian;
  - the ability and willingness of the applicant to assume the responsibility of a guardian with respect to the child; and
  - whether it is in the best interests of the child that the applicant be appointed as a guardian of the child.
- If the child is an Indigenous child, the application must include a plan that addresses how the child’s Indigenous identity, culture, heritage, spirituality, language, and traditions will be respected, supported, and preserved.<sup>33</sup>

In deciding whether to grant a private guardianship order, the court will consider the following:

- Whether you are willing and able to assume the responsibility of guardianship;
- Whether the order is in the best interests of the child; and
- If the child has been in your continuous care for a period of at least 3 months, prior to the hearing (This requirement may be waived).<sup>34</sup>

A private guardianship order will not be granted without the consent of the child’s guardians and the child (if they are 12 or older). However, this requirement may be dispensed with if the court concludes that it is in the best interests of the child to do so.<sup>35</sup>

If the child is an Indigenous child, additional steps are necessary. In applying for the private guardianship order, you must include a plan outlining how you will support and preserve the child’s Indigenous identity, culture, heritage, spirituality, language and traditions.<sup>36</sup> If the order is granted, the guardian must comply with the plan and take reasonable steps on behalf of the child necessary for the child to exercise any rights the child may have as an Indigenous individual.<sup>37</sup>

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<sup>33</sup> *Child Youth and Family Enhancement Act* s. 52.

<sup>34</sup> *Child Youth and Family Enhancement Act* s. 56.

<sup>35</sup> *Child Youth and Family Enhancement Act* s. 55.

<sup>36</sup> *Child Youth and Family Enhancement Act* s. 52(1.3).

<sup>37</sup> *Child Youth and Family Enhancement Act* s. 57.01.

## **CHAPTER THREE – AVOIDING ALIENATION**

### **THE POSITIVE PREVENTATIVE APPROACH**

It is always in the child's best interest to feel that the people who love the child also respect each other. Conflict over the child's affections can cause the child to feel responsible for those bad feelings.

Here are some basic tips about taking a positive, preventative approach:

#### ***1. Build a good relationship with the child's parents***

When your relationship is good with the child's parents, build upon it. Focus on the positives.

If there are problems:

- Do not criticize either parent in front of the child, or to the child.
- Do not attempt to play the child off against a parent.
- Never use the child as a "messenger" to the parent.

Even if you know you have done nothing to contribute to the problem, it is usually a productive strategy to take a "soft approach." For example, if the child's parent is saying that you cannot see the child, write a letter. Stress that you want to work things out together, and that you believe a solution can be found. Keep a photocopy of the letter as part of your records.

#### ***2. Keep a written record***

Keep a written record of when you see the child, and what the child does with you. Keep a written record of your telephone calls from the child and from the parent or parents. Include the dates of the calls. This record may help you later, when decisions are being made about what is in the child's best interests.

#### ***3. Do a self-assessment***

Do an assessment of your own ability to care for the child. Plan how you could show you are able to demonstrate your ability to care for the child and meet these requirements.

#### ***4. Join a support group***

The groups listed in Chapter 4 can provide you with support in your efforts to maintain your relationship with the child. These groups provide an opportunity for you to share your feelings with people who have had similar frustrating experiences. People in the group will also have experience in solving the problems. They will know who can provide legal help in your community.

## STRATEGIES WHEN THE PARENTS' RELATIONSHIP BREAKS DOWN

### ***1. Brush up your negotiation skills***

Good negotiation skills can help you resolve differences with the child's parent and avoid conflicts that are painful to the child as well as to you.

A support group can help you develop negotiation skills to use when you are dealing with the child's parent or parents. Here are some tips that may be useful:

- When you meet with the child's parent to discuss differences, be clear in your own mind about what you want to discuss. If you feel frustrated, vent with your support group, NOT with the parent. Avoid blaming, judging and shaming.
- Choose a neutral place and a time when you can talk without interruption. A quiet restaurant, the home of mutual friends, or even a park on a fine day may be good meeting places.
- Speak clearly about what it is you want to negotiate. Ask the other person for their point of view. Stay focused on the topic. Try not to bring up past problems.
- Listen carefully to what the other person has to say. Do your best to understand the other person's point of view.
- Present your solutions as suggestions rather than demands.
- If you reach an agreement, make sure you both understand what you have agreed to. Specify who will do what, when, and where. For example, if the issue is about when you will spend time with the children, you need to have a plan about how the transfer will take place, and what time the children will go and return.
- At the end of the meeting, give positive feedback such as, "I'm glad we were able to work it out together."

### ***2. See if you can agree with the child's parent or parents***

If you and the child's parents can talk openly and agree about plans for the child and there are no safety issues involved, you can develop a plan together. For example, the parents may have joint custody and you may have access. You don't have to have a separation agreement or a court order, but it's a good idea to write down what you agree to, in case there are problems later.

You can make a written agreement. A written agreement describes the arrangement between you and the child's parent or parents about access or about custody and guardianship. All of these decisions must be in the child's best interests.

Before doing so, make sure both you and the child's parent or parents sign the agreement. It is a good idea to see a lawyer before you sign an agreement. This is to make sure that you have protected your rights. You should see a different lawyer from the one the parent has.

The written agreement can be put into the form of a consent order, which will be filed with the court. If there are problems later, you can show a judge what you and the child's parent(s) agreed to. Judges take these agreements very seriously.

See below for who can explain how to file an agreement in court, and how to make that agreement into a consent order.

### ***3. Find out who can help***

Your local member group of the Grandparents Rights Association can guide you through the initial process of trying to get legal access. Your local group is an excellent source of information about whom to contact for the legal help you need.

If there is no Grandparents Rights Association contact in your community, visit the web page at: <https://canadiangrandparentsrightsassociation.com/>

## **LEGAL HELP IN YOUR COMMUNITY**

Government Mediation Services will assist in situations where the parties have a child under the age of 18 and the gross income of one of the parties is under \$40,000.<sup>38</sup> This is a free voluntary service. This service helps the parties to resolve parenting issues such as residence, decision making, sharing of time, child and spousal support, and some matrimonial property issues.

Family mediators in private practice can provide services similar to those provided by government mediation.

Lawyers who have special training in family law can —

- give you legal advice about all the issues;
- provide mediation or conciliation;
- help you prepare a written agreement;
- give you information and refer you to other services that may help; and
- represent you in court, if need be.

You may be able to get a lawyer who is paid for by Legal Aid. See Chapter 4.

If the child is living in another province or territory, you will have to seek legal advice before looking to mediation or other services.

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<sup>38</sup> <https://www.alberta.ca/family-mediation.aspx#jumplinks-0>

## **Find out what services are available**

A government mediator (in some cases), a mediator in private practice, or a family law lawyer may offer mediation or conciliation.

### **MEDIATION**

A family mediator sits down with you and the child's parent or parents and helps you discuss all the issues. Everyone needs to feel comfortable for mediation to work.

Mediators can help you:

- communicate with the parent or parents;
- solve the problem rather than having a judge impose a decision in court;
- cost less than court action; and
- reach a decision far more quickly than you would if you went to court.

### **CONCILIATION**

Conciliation is like mediation only you do not have to be in the same room as the other person. The conciliator talks to you, then talks to the parent or parents separately. You negotiate through the conciliator.

When you are using a family mediator or conciliator, it is important to find someone you feel comfortable with. The decisions you are making are vital and you need to feel you are being heard and that your input is being taken very seriously. You have a right to ask about the family mediator's qualifications and experience. What is their experience in dealing with access or custody applications by persons other than parents?

You can use a family mediator/conciliator and also see a lawyer. People often use mediation or conciliation while they are proceeding with their court case. If you resolve the issues by using mediation or conciliation, you can settle the matter by a consent order and you do not have to go to court.

## **GOING TO COURT**

If you and the child's parent or parents cannot agree, you may need to go to court and ask a judge to make a court order to deal with decisions about access/contact or custody/parental responsibility.

If you are applying for access or contact, your evidence will likely focus on the fact that your relationship with the child helps maintain family ties and/or provides stability in the child's life. If you are applying for guardianship / parenting responsibility, your evidence will focus on the fact that it is in the child's best interests to live with you.



While it is possible to represent yourself in court, it is recommended to have a lawyer represent you. If you qualify for Legal Aid you may be able to get a lawyer paid for by Legal Aid. See Chapter 4 for how to contact legal aid.

If you don't know a lawyer, you can call the Lawyer Referral service. They will give you the names of three lawyers who practice family law. You can call the lawyer for an appointment. See Chapter 4 for how to contact Lawyer Referral.

### **WHICH LEVEL OF COURT DO I GO TO?**

Which level of court you go to may depend on where the child's guardian has started a court action to deal with the legal issues about separation or divorce. You may need to go to Provincial Court or Court of Queen's Bench. If you are starting the court application yourself, you can go to Family Court, which is part of Provincial Court.

For information about how to make an application for guardianship or contact in Provincial Family Court, contact your support group for information and relevant materials. You can also contact Family Mediation Services.

### **HOW DO I CHANGE AN AGREEMENT OR COURT ORDER?**

What if your situation changes after you have an agreement or a court order?

If you have an agreement, you and the child's parent or parents (and/or the Ministry if the child is in care) can agree to change it. You can file your new agreement with the court or via a consent order.

If you need to change a court order (or if the child's parent refuses to change an agreement) you have to go to court. You need to explain to the judge why you want to change the order and how there has been a change in the needs or circumstances of the child related to the order. In varying an order, the court will consider whether it is in the best interests of the child.<sup>39</sup>

If you got the order in Court of Queen's Bench, you have to go back to Court of Queen's Bench to change it. If you got it in Provincial Court, you can go to either Provincial Court or Court of Queen's Bench (in some cases).

### **ENFORCING AGREEMENTS AND ORDERS**

What can you do if you have an agreement or an order and the parent, for example, will not let you see the child?

You may be able to resolve this problem by contacting Mediation Services or a lawyer. If the Mediation Services or lawyer is unable to assist you to reach a solution, you have to go to court. You may be able to get Legal Aid to do this. See the next section for how to contact Legal Aid.

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<sup>39</sup> *Divorce Act*, s 17; *Family Law Act*, s 37.

## **CHAPTER FOUR – SUPPORTS AND ASSISTANCE**

### **WHERE TO GET SUPPORT & INFORMATION**

#### **CANADIAN GRANDPARENTS RIGHTS ASSOCIATION**

The Association's main function is to serve as a point of contact for people who require assistance in gaining access to grandchildren in case of family separation. Currently the website does not provide any direct contact information.

Website: <https://canadiangrandparentsrightsassociation.com/>

#### **Grandparents Raising Grandchildren (Parents' Support Services of BC)**

Website: [www.parentsupportbc.ca/grandparents.html](http://www.parentsupportbc.ca/grandparents.html)

An organization from British Columbia that offers support to grandparents raising grandchildren, and provides a network of grandparents to advocate for more support and recognition for the role they play in the care of children.

#### **BECOME A KINSHIP CAREGIVER**

Website: <https://www.alberta.ca/become-kinship-caregiver.aspx>

#### **INDIGENOUS ORGANIZATIONS AND SERVICES**

*See: Guide to Indigenous Organizations and Services in Alberta* [family services]

Website: <https://open.alberta.ca/publications/guide-to-indigenous-organizations-and-services-in-alberta>

### **WHERE TO GET LEGAL HELP**

#### **LEGAL AID**

Phone: 1-866-845-3245

Website: [www.legalaid.ab.ca](http://www.legalaid.ab.ca)

Provides legal services to financially eligible applicants. If you have little money, legal aid may pay for a lawyer.

You must meet their financial eligibility rules and have certain kinds of legal problems, like serious family problems, to get a legal aid lawyer to represent you in court.

## **FAMILY LAW OFFICE (LEGAL AID)**

New Clients should call: 1-866-845-3425

With offices located in Calgary, Edmonton, Lethbridge, Red Deer and Wetaskiwin, Legal Aid Alberta's Family Law Offices specialize in assisting clients who have a family law legal problem and who have been referred through the Legal Services Centre.

Once a Family Law Office lawyer is appointed, clients may be offered the assistance of Family Resource Facilitators. These individuals work as part of a legal team to provide services to clients engaged in family law related matters. Family Resource Facilitators help clients to address personal problems by identifying options and developing strategies to cope with their issues. They also help ensure the client understands the legal process for their matter and what is expected of them. Under the direction of a client's lawyer, this may include:

- advocacy;
- crisis intervention;
- information; and/or
- referrals.

## **LAWYER REFERRAL SERVICE**

Calgary: (403) 228-1722

Outside of Calgary: 1-800-661-1095

If you don't know a lawyer, try calling the Lawyer Referral Service. They will give you the name of three family law lawyers you can call for one half-hour appointment.

Ask for lawyers who specialize in family law. Lawyer Referral gives you three lawyers' names and you can make an appointment.

The lawyers can give you some idea of what is involved in solving your problem, and you can decide if you want to hire one lawyer. Ask the lawyer what he or she will charge, and how they want you to pay.

## **DIAL-A-LAW**

Calgary: (403) 234-9022

Outside Calgary: 1-800-332-1091 (toll free)

Operator Hours: 8:30 a.m. – 4:30 p.m., Monday to Friday

Dial-A-Law is a service provided by Calgary Legal Guidance. It is a library of tapes that give you information about the law in Alberta. You can listen to these tapes about family law by calling the above numbers.

## **CALGARY LEGAL GUIDANCE**

Calgary (403) 234-9266

Email: [clg@clg.ab.ca](mailto:clg@clg.ab.ca)

Provides legal advice to people who cannot afford a lawyer, yet do not qualify for legal aid. Advice provided in the following areas: Separation, Divorce, Common Law, Maintenance, Custody and Access and other legal problems.

## **FAMILY LAW INFORMATION CENTRE**

To reach FLIC, go to <https://www.alberta.ca/family-court-assistance.aspx>

For additional information, contact the FLIC offices in:

Calgary 403-297-6981\*

Edmonton 780-415-0404\*

Grande Prairie 780-833-4234\*

Lethbridge 403-388-3102\*

Medicine Hat 403-529-8716\*

Red Deer 403-755-1468\*

The Family Law Information Centres of the Court of Queen's Bench of Alberta are a service provided by Alberta Justice and Justice Canada to help you learn about the Child Support Guidelines and to help those who are making court applications without the assistance of a lawyer.

## **FAMILY COURT SERVICES AND FAMILY MEDIATION SERVICES**

Calgary Courts Centre

Suite 706-S

601 5 Street SW

Calgary, T2P 5P7

[403-297-6981](tel:403-297-6981)

**Hours:** Monday to Friday, 8:15 am to 4 pm

John E. Brownlee Building

8077, 8th floor

10365 97 Street

Edmonton, T5J 3W7

[780-427-8329](tel:780-427-8329)

**Hours:** Monday to Friday, 8:15 am to 4 pm

Regional  
[403-340-7187](tel:403-340-7187)

There are Family Court Services offices located across the province, connected to the Family Courts. These offices offer a range of services related to maintenance, custody and access. The Family Court Services provides assistance and information about Family Court applications involving maintenance, custody and access, including filling out documents and applying for variations in order. The Family Mediation Program provides mediation in custody, access and mediation matters: <https://www.alberta.ca/family-mediation.aspx>

Family Court Services and Family Mediation Services may provide handouts that indicate where to go to get affidavits sworn, what to do in court, when to appear in court, how long court sessions run, where to stand in the court room and proper court etiquette.

Family Mediation Programs [dispute.resolution@gov.ab.ca](mailto:dispute.resolution@gov.ab.ca)

## **STUDENT LEGAL SERVICES**

11011 – 88 Avenue, Edmonton, AB T6G 0Z3  
780.492.8244  
[www.slsedmonton.com](http://www.slsedmonton.com)

A nonprofit, charitable organization of approximately 300 volunteer law students that provide year-round free legal services to those individuals who are unable to afford a lawyer. Please call in advance as student volunteers are not always available at all hours.

## **STUDENT LEGAL ASSISTANCE**

**Tel: (403) 220-6637**

**Fax: (403) 282-0473**

Please address your fax, Attention: [Caseworker's Name]

### **Mailing Address:**

3390 Murray Fraser Hall  
2500 University Drive N.W.  
Calgary, Alberta T2N 1N4

Student Legal Assistance (SLA) is the on-campus law clinic staffed by U of C law students who, with the assistance of volunteer advising lawyers, provide free representation and legal assistance to U of C students and needy Calgary and area residents who are unable to afford a lawyer. SLA provides services throughout the year in civil, criminal and family law matters, with evening clinics during the academic year and daytime clinics during the summer months.

## **ALBERTA CIVIL LIBERTIES RESEARCH CENTRE**

The Alberta Civil Liberties Research Centre is a non-profit, non-government organization dedicated to education, research and publishing in civil liberties and human rights law for Albertans.

For more information, contact:

Alberta Civil Liberties Research Centre

University of Calgary, Faculty of Law 2500 University  
Drive N.W.

Calgary, AB T2N 1N4

Phone: (403) 220-2505

Fax: (403) 284-0945 Web site:

[www.aclrc.com](http://www.aclrc.com)

Please note that we cannot give you legal advice. We provide general public legal education only. To find legal help, see above.