



Grandparents Guardianship Rights

By Jodi Wyman

In most families grandparents play a very important role in a child's life. In separations and divorces, often the grandparents feel helpless.

The issue of grandparent (or other extended family member) access has been controversial for many years. The debate is between the rights of a parent to decide what is in the best interests of their own children, versus the right of a child to build a relationship with extended family.

For years, the courts followed the principle that unless there is evidence that a parent is unable to act in the best interests of their child, a parent's right to make decisions about his or her own children should be respected. Courts need a serious reason before interfering with a person's right to raise their child.

Another concern about forcing grandparent access on parents is that it will lead to conflict and hostility, which will almost certainly negatively affect the

child. This is usually not in the child's best interests.

There are practical problems as well. If a child's parents are separated, the child already has to cope with suddenly going back and forth between homes and juggling schedules and holiday festivities. To add in a schedule of grandparent visits as well could be hard on the child.

Certainly, the role that relatives and particularly grandparents can play in the lives of children can be positive and enriching. If the child does not develop a positive relationship with the extended family early in life, there is no certainty they will pursue a relationship when they are adults and they will have missed out on a very valuable experience.

The provinces of Manitoba, Quebec, New Brunswick, British Columbia, Alberta and Yukon have specific legislation setting out the rights of grandparents. A grandparent can make an application to the Court for visits with their

grandchild. A Judge will decide whether such visits are in the best interests of the child. Manitoba's legislation is fairly recent, and has expanded grandparent rights. The government also created a Grandparent Advisor position through Family Conciliation to provide advice and mediation.

Throughout Canada, the cases where a grandparent has been granted access tend to be ones where the grandparent at some point had primary care of the child, or where one parent is deceased. Courts seem more inclined to grant access to the grandparents if they are the only link to that side of the child's family.

If neither parent is able to look after the child, often a grandparent will apply for guardianship, which gives them primary care and control of the child and the legal right to make decisions. This is much different than just having visitation rights.

In the event of a parent dying, the grandparents may also apply

for guardianship and ask a Judge if they can take over care of the child. In their Wills, often parents will name one set of grandparents as legal guardians. This is not however legally binding. Only a Judge can make a guardianship order, but the Will is good evidence as to the parents' wishes.

As with all areas of law where children are concerned, every case is different and a Judge must try to do what is best for the child.