

Grandparents & Grandchildren

Grandparents sometimes lose contact with their grandchildren. This can happen for many reasons, such as a family dispute, separation, divorce, or remarriage.

This section gives legal information for grandparents who want to know how they may be able to reconnect or stay in contact with their grandchildren.





This publication explains the law in a general way as it applies in Nova Scotia, Canada. The information is not intended as legal advice. If you have a legal problem, contact a lawyer for advice about what steps you should take in your situation. We thank the Law Foundation of Nova Scotia, the Department of Justice Canada, and the Nova Scotia Department of Justice for providing core funding for our services, which makes publications like this possible.



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Do I have a right to see my grandchild?

Most of the time, grandparents have a good relationship with their family and can spend time with their grandchildren through one or both parents. But the law does not say parents must allow their child to spend time with their grandparents.

What legal words describe parenting and spending time with a child?

Custody

An old term that meant having the responsibility to care for the child, and to make the major decisions about the child's health, well-being, and upbringing. The term custody is no longer used in the [Parenting and Support Act](#) (NS) or [Divorce Act](#) (federal) and has been replaced with the terms 'decision-making responsibility' and 'parenting time'.

Decision-making responsibility

Decision-making responsibility is a general term describing who is responsible to make significant decisions for and about a child. For example, this includes decisions about a child's health, education, culture, language, religion, spirituality, and significant extracurricular activities. This has traditionally been called 'custody'. The term 'custody' is no longer used.

Parenting time

Time a child spends with a parent or guardian because of a court order or agreement. It is a term used in both the *Parenting and Support Act* (NS) and the *Divorce Act* (federal). The term 'access' is no longer used.

Contact

Time a child spends with someone other than their parent or guardian because of a court order or agreement. This can be a grandparent, or anyone else who is close to the child. It is a term used in both the *Parenting and Support Act* and *Divorce Act*. Contact may sometimes also be called access although the term 'access' is no longer used in the law.



Interaction

Communicating with a child outside of parenting time or contact. It includes:

- phone calls, emails, or letters
- sending gifts or cards
- attending the child's school activities or other activities
- receiving copies of report cards or school photos
- video chats with the child.

An agreement or court order that uses the terms 'custody' or 'access' continues until it is changed ('varied') with a new agreement or court order. You **do not** need a new agreement or court order just because the language used in the law has changed.

Do I have custody of my grandchild if my teenage child becomes a parent?

No. The person who gives birth is the parent of the child, regardless of the birth parent's age.

If your child is under the age of 19 and still lives at home you have a legal duty to support your child.

If your child is struggling to parent as a young person and wishes to give you authority over their child then you can raise your grandchild without any formal agreement or court orders in place.

If you want to have a formal agreement or court order in place to confirm your decision-making authority regarding your grandchild, you may apply to court. To make an application to court you first need to ask for the court's permission to go ahead with your application. This is called asking for the court's '**leave**'. You would have to provide a reason(s) why it is in the best interests of your grandchild to proceed. You would also have to provide notice of your court application to the child's other parent. That person would be able to request decision-making authority (custody) of your grandchild and would be considered first in line to raise the child, unless there are reasons why that would not be in the child's best interests.

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Can I apply to court for decision-making responsibility or to spend time with my grandchild?

You should avoid involving the court if possible. If this is not possible, you can apply to court.

If you wish to apply to have the decision-making authority ('custody') of your grandchild, or parenting time ('access'), you must ask for the court's **leave** under the *Parenting and Support Act* or the *Divorce Act*.

Leave is permission from the court to make an application. When you ask for leave, you must explain to the court why you are asking to have decision-making responsibility over your grandchild, and what role you play or have played in your grandchild's life.

Grandparents applying for contact time with a grandchild or interaction under the *Parenting and Support Act* do **not** need to ask for leave.

Grandparents applying for contact under the *Divorce Act* must ask for leave.

It is always a good idea to talk to a lawyer if you are thinking about going to court.

What are some ways to reach an agreement without court?

Negotiation

A less formal process of discussing the issues the child's parents and grandparents do not agree on to try to reach an agreement. You can try to negotiate with your grandchild's parents on your own or with someone else's help, such as a lawyer.

Mediation

An alternative or assisted dispute resolution (ADR) process where a mediator helps parties reach an agreement. A mediator is a neutral, independent, and objective third party who is trained in ADR.

If the child's parents and grandparents cannot reach an agreement on decision-making responsibility (custody), contact, or interactions, mediation is an option. A mediator will meet with the people involved, discuss the issues, and help them come to an agreement. Mediation is voluntary, and everyone must feel comfortable with the process.

Private mediation services are listed online or in the telephone book. You can also find a mediator through Family Mediation Canada (fmc.ca). You might be referred to a mediator through the family court process.

Collaborative law

A process where lawyers trained in collaborative law help participants work together to reach an agreement. Everyone must agree at the beginning to work together without going to court. You can find a trained collaborative family lawyer and get more information about collaborative family law online at collaborativefamilylawyers.ca.

Joint family counselling

May be an alternative to a court or negotiated settlement. This gives both sides an opportunity to air out their differences and to help each other understand why a relationship between a grandparent and a child is being blocked.

No matter what approach you take, it is always a good idea to get legal advice if you are trying to reach an agreement. If you reach an agreement, it is important to get independent legal advice from your own lawyer before you sign the agreement.

How do I apply for decision-making responsibility, contact, or interaction?

You can start an application for decision-making responsibility, contact, or interaction with a lawyer's help, or on your own. If you cannot afford a lawyer, you can apply to Nova Scotia Legal Aid on their website, nslegalaid.ca, or contact your nearest [Legal Aid office](#). Legal Aid is listed under Legal Aid in the telephone book.

Or you can [hire a lawyer in private practice](#) who does family law.

If you do not have a lawyer, you can ask court staff for information about the documents you must file, or go online to nsfamilylaw.ca for information about where to start. You can also make an appointment to speak with the Summary Advice Lawyer. The Summary Advice Lawyer provides free, brief legal advice to anyone who has a family law issue but who does not have a lawyer. There are no income criteria. Call the family court for contact information, or go to nsfamilylaw.ca.

Intake is a session at family law courts where you will get information about starting a court application or settling a family law matter outside of court. Intake can happen at the court or online. You must do an intake session before court staff will look at your application.

Once you have given the court your application and you have had an intake session, you may take part in **conciliation**. This is a form of dispute resolution. A court officer will help decide what issues you need to sort out. They will make sure everyone gives the court the needed documents. And they will help negotiate a settlement if they can. The conciliator may speak with both sides together or separately.

If you cannot settle your matter, you can ask the court for a formal hearing.

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How does the court decide what is in a child's best interests?

To decide what is in a child's best interests, a judge will think about:

- the child's needs
- the parents' or guardians' ability to care for the child
- how the parents or guardians care for the child
- the plan proposed for care of the child
- the child's cultural, linguistic, religious, and spiritual heritage
- what the child wants, if appropriate
- the relationship between the child and their parents or guardian
- the relationship between the child and their grandparent(s)
- how well the adults in the child's life talk with each other
- whether there is family violence and its effects on the child.

In cases about contact or interaction with grandparents, a judge will also think about:

- whether the child's parents or guardians are willing to support contact
- whether an order for contact is needed to allow the child to see their grandparent(s)
- if there is family violence and its effects on the child.

Where do I apply to court?

Generally you must apply to the [family law court closest to where the child lives](#).

Is there financial support for grandparents with decision-making responsibility or care of a child?

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Anyone, including a grandparent, who has decision-making responsibility for a child can apply to court for [child support](#). There is information about child support at nsfamilylaw.ca. You can also talk to a lawyer about how to apply for child support.

Grandparents who care for their grandchildren may also qualify for government tax benefits, like the [Canada Child Benefit](#). You can get information about the Canada Child Benefit from the Canada Revenue Agency, at canada.ca/en/revenue-agency.html or by calling 1-800-387-1193.

What if the person with care of my grandchild will not follow a court order for contact?

If the person with care of your grandchild prevents your court ordered contact or interaction, you should first try to work out an arrangement with them. You should avoid involving police or the court if possible. If this is not possible, you can apply to court to take steps to enforce the order. It is best to [speak with a lawyer](#) before you do that. You can ask a lawyer about [section 41 of Nova Scotia's Parenting and Support Act](#), which is a part of that law that may help with enforcement. You may also wish to try family counselling to find out why the parent is preventing your contact with the child.



Can I apply to change a court order?

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You can apply to court to ask the court to vary, or change, a court order if there has been an important change in circumstances since the court order was made.

This could include:

- a change in parenting arrangements
- an address change affecting your ability to visit your grandchild
- a change in your grandchild's schedule that affects contact or interactions.

What should I do if I suspect a child is being neglected or abused?

If you believe that any child is being neglected or abused, you have a legal duty to report it to the Nova Scotia [Department of Community Services](#). Contact the department by [getting in touch with the office nearest you](#), or use these toll-free numbers:

- Weekdays, 8:30 am–4:30 pm: 1-877-424-1177
- Weekends or holidays: 1-866-922-2434

If my grandchild is taken into care by child protection, what will happen next?

If a child is abused or neglected, the Department of Community Services will try to keep them in their home and offer services to the parents and child. However, this is only if the child is safe. If a child is in serious risk of harm, the Department may remove a child from the home and take the child into care.

'Taken into care' means the child is removed from the home and is cared for in a foster family's home or in another place. A 'plan of care' is the Nova Scotia government's term for arrangements that are made about the child. If a child is taken into care, the Department must take the matter to court for a judge to review. This must happen within five days or the child will be returned to their home.

When the Department decides that a child will be placed in care, the law about child protection ([Children and Family Services Act](#)) says that the child must be placed with a relative if possible. Grandparents are

often asked to care for children while their parents work to address parenting concerns. Sometimes this is for a short period of time, other times it may become a permanent situation.

If there are significant concerns then the child protection case may continue for between 18 months and 2 years to allow enough time for parents to address the parenting concerns. If the parents are unable to address the concerns within this timeline then the court must place the child into permanent care, unless there is another plan to consider. Often that plan includes a grandparent permanently caring for a child.

A child who has been placed by court order in the permanent care of the “Minister of Community Services” may be adopted if the court agrees that is in their best interests. Generally the Department of Community Services would have to approve your proposal to adopt your grandchild. Once a child is adopted, the Department of Community Services is no longer involved, and the parents who adopt the child will make decisions about contact with the child’s birth family.

You can get more information about child protection online at nsfamilylaw.ca, or contact Nova Scotia Legal Aid or a lawyer in private practice.

Where can I get more information about grandparents and family law?

Nova Scotia Legal Aid:

Your local Legal Aid office is listed under Legal Aid in the telephone book or you can find them online at nslegalaid.ca.

Family law lawyer in private practice

A lawyer in private practice who does family law. Go to legalinfo.org, under Lawyers and Legal Help, for ways to find a lawyer.

Family Law Nova Scotia

The website at nsfamilylaw.ca has information for grandparents at www.nsfamilylaw.ca/children/information-grandparents

NS Child Welfare Services

Online: novascotia.ca/coms/departement/contact/ChildWelfareServices.html

Advocacy and support

You can find information about grandparents advocacy and support groups online or by contacting [NS 211](https://ns211.ca).

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General legal information

- Legal Information Society of Nova Scotia (LISNS)
Legal Information Line
902-455-3135
1-800-665-9779
Email: questions@legalinfo.org
www.legalinfo.org