

# A Grandparent's Right to Spend Time with their Grandchildren



This booklet was produced by the Public Legal Education and Information Service of New Brunswick (PLEIS-NB). PLEIS-NB is a non-profit, charitable organization whose goal is to educate and inform the public about the law and legal processes. PLEIS-NB receives core funding and in-kind support from the Department of Justice Canada, the New Brunswick Law Foundation, and the New Brunswick Office of the Attorney General.

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The courts in New Brunswick recognize that fostering healthy relationships between children and their grandparents and other immediate family members is in the best interests of the child. Such relationships should not be disrupted without a significant reason related to the well-fare of the child. The purpose of the booklet is to explain the options that grandparents have if they are denied the opportunity of spending time with their grandchildren.

This booklet does not contain a complete statement of the law in the area of grandparents' rights, and laws change from time to time. Anyone needing advice on his or her specific situation should consult a lawyer.



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## As a grandparent, do I have the right to spend time with my grandchildren?

Grandparents may ask questions about their rights to have access to a grandchild especially at times when their relationship with the child becomes disrupted for one reason or another. For example, separation or divorce can be a stressful process and this can affect relationships between children and their grandparents. When this happens in New Brunswick, grandparents and other immediate family members have the right to apply to the court for access. When it comes to children, the courts must always decide based on the “best interest of the child”.

### Immediate Family Members Include:

- Brother or sister of the child
- Brother or sister of the child’s mother or father
- Spouse or common-law partner of any of the above

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Amendments to the *Family Services Act* in May 2017 introduced additional factors the court must consider when deciding on access to children. The new provision recognizes children’s right to benefit from the love, affection, and ties that exist between them and each grandparent.

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## If a parent or guardian won't let me see my grandchildren, will I have to go to court?

Going to court should always be a last resort. It's a good idea to explore out of court options to settle any differences or disagreements with your grandchild's parent or guardian. Consider the following:

- Identify the reasons that the parents are denying you access.
- Discuss any conflicts such as differing views on parenting or discipline.
- Never ask the grandchildren to relay messages back and forth.
- Never criticize the parents in front of the grandchildren.
- Try your best to be cooperative and work out ways to maintain a healthy positive relationship with your grandchildren.
- Enroll for the free parenting after separation course, called *"For the Sake of the Children"*.

### Try to work out an Agreement to Resolve your Differences

- Invite the parent(s) to go to counselling or family mediation with you. Family mediators are trained, unbiased professionals who may be able to help you resolve the situation.
- Put any terms you agree to down in writing.
- Before you sign an agreement, have a lawyer review it.

**Note:** If you can't come to an agreement, then you can ask a judge to decide.



## If the parents don't agree the grandchildren should spend time with me; can I apply to the court for access?

Yes. If you are being denied contact with a grandchild, you can ask the court to make an order granting you access. In New Brunswick, you do not have to get the court's permission to apply. When judges decide whether to grant an order of access, they must decide based on the "best interests of the child". That will include considering the willingness of the parent or guardian to foster access with the grandparent. It is your responsibility to show the court why it is in the child's best interest to spend time with you even against the parent's wishes.

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Remember, when considering access to a grandchild, the judge will consider, among other factors, the willingness of the parents to facilitate that access and the necessity of making the order.

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## Does applying to the court for access guarantee I will be in my grandchild's life?

Not necessarily. In most cases, it is the parents who decide whether their children will be in contact with grandparents or other family members. Courts may not want to interfere with a parent or guardian's decisions about a child's upbringing. If you do not get along with the parents of your grandchild, the court may decide that it is not in your grandchild's best interest to spend time with you. You must be prepared to convince the judge that it is in your grandchild's best interest to have a relationship with you.

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The law requires the judge to consider the importance of supporting a healthy, loving relationship with grandparents, but this is not the only determining factor.

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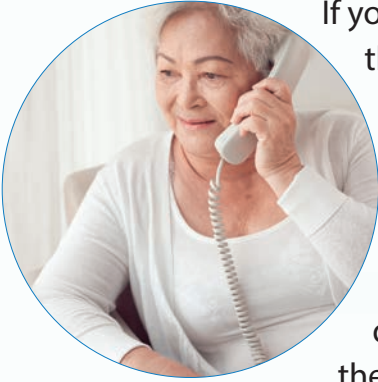


## How will the judge decide whether to make an order granting me access to my grandchild?

When deciding any request for custody or access, the judge considers the “best interest of the child”. This means the judge will look a combination of factors and the specific circumstances of each case. In New Brunswick, the judge must consider the following factors that are set out in the *Family Services Act*:

- The mental, emotional and physical health of the child [...];
- The views and preferences of the child [...];
- The effect on the child of any disruption of the child’s sense of continuity;
- The love, affection and ties that exist between the child and each person to whom the child’s custody is entrusted, each person to whom access to the child is granted and, where appropriate, each sibling of the child and, where appropriate, each grandparent of the child;
- The need to provide a secure environment that would permit the child to become a useful and productive member of society through the achievement of his full potential according to his individual capacity; and
- The child’s cultural and religious heritage.

## Does access mean visiting my grandchildren? Or, can the court order other kinds of contact?



If you end up going to court, the court can set out the form that access may take. For example, access can be in the form of visits, phone calls, Skype/Facetime calls, texts, letters, or any other method the court chooses. You can tell the judge the different ways you could spend time with your grandchildren. If the court decides to order visits, they may specify that they take place at your home, the grandchild's home, or at another location, such as a restaurant.

## If I have to go to court to request access, how do I apply?

In New Brunswick, you must make an application in the Court of Queen's Bench – Family Division. This is often referred to as "Family Court".



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If you wish to apply for access to a grandchild, you should speak with a lawyer.

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## What if I can't afford a lawyer?

If you cannot afford a lawyer, contact the **New Brunswick Legal Aid Services Commission** to see if you qualify for family legal aid assistance. You can find out about their services, financial eligibility criteria and locate offices on their website at: [www.legalaid.nb.ca](http://www.legalaid.nb.ca). Typically, Family Legal Aid does not represent third parties who are applying for custody or access. However, you should check with them in case your situation meets their criteria.

If necessary, you can make your own application for access to the court. The guide *Applying for Custody, Access and Support in New Brunswick* is available on the Family Law NB Website ([www.familylawnb.ca](http://www.familylawnb.ca) - just click on self-help guides.)

On this site, you can also find the fillable forms that you need to complete and information on the procedure for applying. If you live in a region that has a Family Division Case Management model, you must use different forms which you get at the courthouse.

If you are not sure about which court model is used in your region's court, you can call the **Family Law Information Line** at **1-888-236-2444** for direction on this.

If you handle your own application, it's still a good idea to seek legal advice about the application. You can also book an appointment with a **Family Advice Lawyer** for up to two hours of free legal information and assistance with court forms.

Family  
Advice  
Lawyer

Toll-free: 1-855-266-0266  
Saint John: 658-2261

## What if the parents of my grandchild are in the middle of a custody dispute? Do I have to wait for that to be settled before I can apply?

No. You can apply for access regardless of whether or not there is a final custody order in place concerning the child.

## Is it possible for a grandparent to apply for custody of a grandchild?

In New Brunswick, any person may apply for custody of a child. As with access, the courts will determine if the application for custody is in the best interest of the child.

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If you wish to seek custody of a child, you should seek legal advice.

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## Resources and Legal Services:

**Legal Aid:** [www.legalaid.nb.ca](http://www.legalaid.nb.ca) may be able to take your case if you meet their criteria. For more information and office locations, **consult their website.**

**Family Law Advice Lawyer Service:** 1-855-266-0266. If you live in the Saint John Region call 506-658-2261.

**Family Law NB Website:** ([www.familylawnb.ca](http://www.familylawnb.ca)). Offers self-help guides and forms for individuals handling their own family law case, including: **“Applying for Custody and Access in New Brunswick”.**

**For the Sake of the Children:** a free parenting after separation course. To register, call 1-888-236-2444 or email [FTSOTC@gnb.ca](mailto:FTSOTC@gnb.ca).

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