

Courting your grandchildren

Some grandparents must resort to the legal system to gain access to their grandkids | by Linda Silver Dranoff



Not all grandparents are welcomed into the lives of their grandchildren. This alienation usually arises from a chill between the grandparents and their own children – or their child’s partner. When a rift does occur, grandparents often wonder what their rights are and if they’re not entitled to see their grandchildren?

There is no simple answer. While the law does permit an application to a court for an order of access by grandparents to their grandchildren, there is no guarantee that such an order will be granted.

In law, grandparents’ rights are secondary to the best interests of the children, and courts are reluctant to interfere with the parents’ prerogative to decide what is in their children’s best interests without evidence that the parents are making decisions that harm their children. Courts don’t impose on children and grandchildren an obligation to *create* a relationship with grandparents.

Here are some examples how grandparents have won and lost an order for access in court.

- In 2001, the Ontario Court of Appeal reversed a trial court decision that had forced grandparent access to an eight- and a 10-year-old. The mother complained of the grandmother’s constant interference, and the children developed negative feelings toward her.

The appeal court said the grandmother’s insistent attempts to get access on her own terms caused disruption and stress, ruling the children had loving parents who were entitled to make decisions about the nature and frequency of access. Failure to see their grandmother was not proven to be detrimental to either of the children nor did it

warrant judicial intervention.

- In a similar case, a grandmother lost her claim for access after the relationship deteriorated because of how the grandmother photographed her visits and voiced disapproval regarding the parents’ decisions about the children’s education.

- On the other hand, in a 2007 case, the court granted an application by paternal grandparents, allowing access to their grandchildren. The daughter-in-law had lived with them since she was 15 years old, during which time she became intimately involved with their son, eventually married him and had three

upset by the absence of his grandparents. The mother claimed the child did not enjoy his time with them and that they refused to enforce her discipline in their home, resulting in the child misbehaving when he returned.

The court ruled the mother exaggerated and seemed to resent the grandparents for what they were able to give to the child and that this was not child-focused thinking. The grandparents received access one weekend day a month on the mother’s time.

- In a 2005 case, the maternal grandmother (a single parent) and her own daughter (an only child) had such an

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children. She lived with them throughout her marriage, but when she and her husband separated, she left and resisted grandparent access. The court ruled it was best for the children to have regular access to their grandparents and a flexible schedule was imposed to accommodate the mother’s schedule.

- In a 2007 case, paternal grandparents secured access to their eight-year-old grandchild because of the close relationship the child had developed with them. They had cared for the child when, as an infant, it had medical needs the mother could not manage alone. (She had separated from the child’s father one month after the baby was born)

The mother had opposed the grandparents’ application, saying the child should see them only during visits with the father. The child was confused and

acrimonious relationship that the court did not want the grandchildren exposed to it. The mother alleged she herself had been abused physically and verbally by her mother when she was growing up. The court was told the grandmother had a mental affliction for which she received in-patient hospital care.

Nurturing a good and beneficial relationship with the child and a respectful relationship with the child’s parents are still a grandparent’s best bet for maintaining contact with a grandchild.

Starting a court action can cause trauma and harm the family bond even further – even if you do win. ●

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