

LEGAL ISSUES AND COSTS ASSOCIATED WITH BECOMING A CUSTODIAL GRANDPARENT

An overview for Custodial Grandparents
Ontario Edition



NICE

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Legal Issues and Costs Associated with becoming a Custodial Grandparent

“So anyhow, we got full custody, and been raising her ever since. Last year when she turned 18, we said what do you want for your birthday? And she said she wants us to adopt her. And she’s doing amazing.”

Taking custody of your grandchildren can be complicated. Custodial grandparents do not have automatic rights to legal help when seeking custody of their grandchildren.

This pamphlet can assist you to better understand your rights in this important matter and make choices that make sense for you and your family.

What you need to know:

As a custodial grandparent, you are not automatically granted the same legal support that is afforded to child protection bodies or to biological parents. Custodial grandparents are viewed legally as third parties, and do not benefit from this same level of financial and legal support.

This pamphlet will provide you with information about legal issues that face custodial grandparents, and resources that can help you in your particular circumstances.

Custodial Arrangement Options

You may ultimately choose to adopt your grandchild, or to take legal custody of your grandchild. Adoption and legal custody can have different impacts on your ongoing right to raise your grandchildren, and your ability to get financial assistance.

Because adoption and legal custody can change your rights to financial assistance and impact decisions you make around raising your grandchildren, it is important to consider both options carefully. To make sure you are making the right choice in your situation, get legal advice.

About ADOPTION

Adoption and grandparent rights

- Adoption ensures that your grandchildren will not be taken away from you. Custody is permanent in cases of adoption.
- When you adopt your grandchildren, you become their legal parent, even if you are their grandparent.
- Adoption allows you to make all legal decisions for your grandchildren, the same as you would if you were their biological parent.
- Adoption may be a lengthy, expensive, and complicated process. If you think adoption might be the best route for you and your family, get legal advice.

Adoption and financial assistance

- When you adopt your grandchildren, the government no longer has to provide you with most forms of financial support or assistance.
- If the child was a Crown ward you may be eligible to receive some assistance for services such as psychological counseling, based on the child's specific needs.

About LEGAL CUSTODY

Legal custody and grandparent rights:

- Legal custody of your grandchildren may be temporary or indefinite. The children live with you but are not your children under the law, and can live with you as long as you have custody. The children are considered wards of the court.
- Legal custody lasts as long as your order of custody does. You may need to obtain more than one order of custody to have your grandchildren stay with you long-term.
- Having legal custody gives you the right to make legal decisions for your grandchildren.
- Your grandchildren can be included on medical insurance and travel with you outside the country.

How do I get legal custody?

- You may either get custody of your grandchildren:
 - By seeking custody through the courts as you would in a divorce proceeding, or,
 - At the request of your local Children's Aid Society (CAS), if the CAS (or in some cases, the courts) determine that your grandchildren's parents are not taking care of them.
- If CAS asks to you to take custody of your grandchild, you should ask them to provide you with as much help as possible with getting legal custody. Your grandchild's caseworker may be able to provide you with support (or help you find support) that will sharply reduce or eliminate your legal costs.
- Taking custody of your grandchildren can be costly, both personally and financially. Be sure to ask CAS what kinds of financial or in-kind assistance they can offer you. Don't be afraid to tell them that you may need additional support, particularly if your grandchildren have special needs or disability-related needs. CAS may be able to help with many of the short-term and long-term personal and legal costs associated with taking custody of your grandchildren.
- You have some time to consider how you might be able to care for your grandchildren.
- Don't feel rushed. You may wish to talk over your decision with relatives. You don't have to agree to take custody of your grandchildren. You don't have to decide immediately.
- Because custody arrangements are not permanent, your grandchildren's parents can challenge your legal custody any time. A judge may decide the parents are capable of parenting again. In that situation, you would no longer have custody of your grandchildren.

Legal custody and financial assistance:

- Having legal custody means you may lose monthly foster payments. If taking custody will cause financial hardship for you, it is worth talking with your caseworker to see if they can help you secure financial support for your grandchildren.

- You may be eligible for other kinds of governmental support depending on your particular situation. You can find more information about financial support here: [pocket tool uri]

What do I need to know before I go to court?

Matters of custody are dealt with in Family Court. Before your court date, it can be very helpful to get advice from a person who practices family law (a lawyer or paralegal).

- You may be able to use a *duty counsel lawyer* to help you in court. This will depend on your income and your circumstances.
- Advice from Family Court staff is also available at certain times. Staff can explain procedural issues, like filling out forms, but cannot act for you as a lawyer would.
- The forms you will need to prepare for court are available online or at any family law court.
- Free information about family law issues, resources, and court procedures is also available at each courthouse where family law is practiced.
- If you do not have a lawyer, a free guide on how to represent yourself at Family Court is available on the Internet at:
http://www.ontariocourts.ca/oci/files/guides/guide_family.pdf
- Many Family Courts in Ontario have mediation services available. Mediation is a voluntary process by which a trained and neutral mediator helps the family come to an agreement together. Both sides have to agree to try mediation.
- If mediation is unsuccessful, the information discussed cannot be used in any subsequent legal proceedings, except in very limited cases. If mediation is successful, both sides sign a mediation agreement. Mediation can be an effective and low-cost way to reach an agreement, but it is strongly recommended to seek legal advice before trying mediation.

Legal Aid in Ontario

You may require the services of a lawyer to obtain or keep custody of your grandchildren, or to adopt them. If you cannot pay for a lawyer, Legal Aid may be able to help. In Ontario, Legal Aid is provided by right to the child's parents, but not to grandparents. If you wish to change or maintain a legal living arrangement related to your grandchildren, you may need to pay for some or all of the legal costs, depending on whether your income qualifies you for legal aid, and what kind of legal aid you may be eligible for.

- You will have to complete an 'eligibility test' at the Legal Aid office closest to you to determine if you qualify for legal aid.
- You may qualify either for duty counsel, which provides more limited help and does not assist you with your case from beginning to end, or for Ontario's certificate program, which will provide more extensive assistance. You may be able to pay a small monthly fee to access the certificate program.
- The test for legal aid will ask you about the nature of your legal problem and your ability to pay for a lawyer.
- Your ability to pay for a lawyer is decided by your assets, income and expenses.
- Only those with the lowest incomes will be able to get all their legal costs paid.
- Legal aid may be able to arrange loans and/or subsidies for those with slightly higher incomes.
- For Legal Aid information, call: **1-800-668-8258** or use the Internet at: www.legalaid.on.ca/en/getting.

Lawyer Referral Service

- The Law Society of Upper Canada can help you if you have difficulty finding a lawyer.
- To find a lawyer, you can consult the Lawyer Referral Service of the Law Society of *Upper Canada* (Ontario).

- ▷ The Lawyer Referral Service will provide you with the name and contact information of a lawyer or paralegal who will provide you with one free 30 minute consultation.
- ▷ Call: 1-800-268-8326 or 416-947-3330 (within the GTA)
- ▷ Online referral requests can be done via Internet at <http://lsrs.lsuc.on.ca/lsrs/>
- You may use other resources to find a lawyer. Before you talk to a lawyer, ask about the cost of a consultation.
- Also, ask for a printed copy of the cost of each of the legal services they will provide.

Where can I get more information about Custody and Family Law?

- Use the Internet at: www.attorneygeneral.jus.gov.on.ca/english/family/
- See the free publication “Family Law Resources in Ontario” at: www.cleo.on.ca/english/pub/onpub/PDF/family/familyresource.pdf
- Community Legal Education Ontario (CLEO) offers free online information about Family Law, as well as community legal clinics. Use the Internet at: www.cleo.on.ca/english/links.htm
- Family Law Education for Women (FLEW) in Ontario offers many free online documents about Family Law: Use the Internet at: <http://www.onefamilylaw.ca/en/english/>

For updated information on:

Financial resources

Legal information & resources

Resources for children with special needs

Support groups

Other issues facing grandparent caregivers

Visit www.cangrands.com

For up-to-date information in this pocket tool, visit www.nicenet.ca/



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