

AGENDA – GRANDCHILD/GRANDPARENTS ACCESS

THE NEED FOR A CHILD FRIENDLY LAW

- #1 The MANDATE for Alberta Justices' *Alberta Family Law Reform Project* (precursor to *the Family Law Act*) was "to make family law more understandable and accessible to all Albertans" (p. 4, workbook). This includes custody and access issues. The "Best Interests of the Child" concept was to be prime. Albertans reflected their values and beliefs in the resulting *Alberta Family Law Reform Stakeholder Consultation Report, 2002*, and clearly indicated that children should have the right to have a relationship with their grandparents (p. 93). They expressed that when parents deny this access to their children they should provide valid reasons for denying access (p. 18). "Grandchildren are a part of who their grandparents are!"

The Family Law Act as it pertains to grandchild/grandparents access has been made *less* understandable and accessible! This is *not in the best interests of the child*. Some grandparents are now required to jump additional hurdles and must "obtain the leave of the Court," on notice to the guardians, PRIOR to bringing *application for access* before the Courts. Family lawyer and President of Alberta Civil Liberties and Privacy Association, Stephen Jenuth, does not see the logic in making grandparents go to a judge to get permission to apply for access simple because their grandchildren's parents are together. "It strikes me that this has to do with children's rights, not the parents." "I don't think we should put extra hurdles in the process." "I think the reasons why grandparents would feel it necessary to apply for access would be the same (for married or separated parents), so I don't think it is rationally based."

This legislation does not support the *best interests of the children* concept as experts and research shows that children need a diversity of people and experiences in their lives, family (including grandparents), and community in order to *maximize their full and healthy development*. (*Physical, emotional, social and relational*). *Alberta's Promise* to children that Premier Klein instituted in 2005 and which was endorsed by all MLAs states: "It takes an entire community and extended family to be involved in children's lives for them to reach full and healthy development." (Ron Bell, Executive Director of *Alberta's Promise* said, "The Government is committed to that end").

C.A.R.P. (Canadian Association for the 55 Plus) Article, August 2005: "*Best interest of the child concept is important and can and should be*

processed in a more simplified manner with less financial burden to grandparents.” For example, foster parents are assessed and monitored by children’s aid groups. Perhaps this direction should be considered for grandparents seeking access and custody as an alternative to the courts.

C.A.R.P. Action Article, October 2005: *Grandparents Rights – Keeping It All In The Family*. Another alternative could be increased training for judges, lawyers, mediators and staff of the children’s aid society (or its equivalent) to ensure understanding of family dynamics that is non-ageist. Burden of proof that grandparent’s access to grandchildren would be detrimental should fall on the mediator, court, or children’s aid society (or its equivalent). Decisions must be evidenced-based.

Alberta Justices’ *Unified Family Task Force Report and Recommendations 2000* states: “It is very much in society’s interest as well as those affected by the breakdown of family relationships, that special efforts be made to resolve disputes...”(p. 13). As a result of the Report, a Unified Family Court system with specialized training for judges, lawyers, mediators and child care workers was in the process of being implemented to help facilitate resolution of family disputes in Alberta, but **was recently dropped!** Marlene Graham, MLA, said, “The current system is fragmented, often requiring trips to two or three different levels of court which can be confusing.” *Why then was this Unified Family Court concept dropped?*

Judge Victor Tousignant, Provincial Court judge (Calgary) says, “Anybody who has been in court especially on family matters sees that it can be very destructive, hugely expensive and very unsatisfying.” “If you can just get people to sit down and talk chances are pretty good you’ll come to some kind of settlement.”

We have suggested legislation that includes MANDATORY MEDIATION as a means of bringing all parties to the table for some kind of resolution for all.

The *Alberta Roundtable on Family Violence and Bullying* (2004) invited the *Best Practices Expert Panel* from across North America. They and the group participants *Finding Solutions Together* stated that children need a diversity of experiences in their lives (extended family, including grandparents and community) to maximize their full and healthy development – physical, psychological, and emotional. (*Best Interests of the Child* concept).

As a Family Court judge in Calgary Judge Lipton feels that “as long as children are used as weapons between parents or between grandparents and parents, the odds of those children getting in trouble with the law increases.” “When it is clearly in the best interest of the children or

grandchildren and such access is denied I frankly find such behaviour despicable.”

Grandparents Day Proclamations, Federal and Provincial (cities of Edmonton and Calgary) raises the awareness of the important role grandparents play in the lives of their grandchildren.

Alberta’s Minister of Seniors article on Grandparents Day says: “Seniors are so important...as part of our strong families today.”

Elderly Adult Resource Service (E.A.R.S), Edmonton says, “denying access to grandchildren is emotional abuse of elders.” 780 – 477 – 2929.

Dr. Roshni Daya, L.L.B., Ph.D., consulting psychologist, says, “We need to reach a MIDDLE GROUND approach to grandchild/grandparent access.” The middle ground approach is: *there needs to be a presumption of contact!*

The *Best Practices Expert Panel* members said “Someone in the family needs to “stand-up” for children. Grandparents *are* standing up for their grandchildren!”

We need to broaden the statutory entitlement for grandparents seeking access to their grandchildren *in the best interest of children.*