

AGING AND THE LAW SERIES

What Every Professional Needs to Know

GRANDPARENTS

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Learning Goals

1. Key statistics about grandparents in Canada
2. Access issues for grandparents to grandchildren
3. Common tools to put money aside for grandkids
4. Importance of wills
5. Substitute Decisions
6. Grandparent Abuse

1. Key Statistics:

Portrait of Grandparents in Canada

- Each grandparent – average of 4.7 grandchildren
- 80% of women over 65 and 74% of men over 65 were grandparents
- 2/3 of women and about ½ of men in the ages of 55-64 were grandparents
- 2% of women and 1% of men aged 45 and under were grandparents



**In 2001 – 5.67 million
Canadians were grandparents!**

Grandparents in Shared Homes

- 474,400 grandparents living in shared homes in 2001
- Majority of grandparents in shared homes (242,800) lived in multi-generational households in 2001
- 16% of grandparents in multi-generational households were financially responsible for the family
- Where single 'parent' household, 50% of the grandparents were financially responsible for family



Skip Generation Households

- In 2001 – 56,700 (1% of all grandparents) living with grandchildren without either of the child's parents
- Often known as 'Kinship Care'
- 2/3 of these 'skip generation' household were women, and 46% were retired
- 56,800 grandchildren were being raised in 2001 by their grandparents – 25,200 were aged 14 or under
- 2/3 of those skip generation 'grands' were financially responsible for the household

Seniors' Incomes (2003)



- \$43,800 – average after-tax income of senior families in which major income earner was 65+
- \$23,000 – average after-tax income of seniors living on their own

2. Rights of Access

- No automatic 'right' to custody of or access to grandchildren
- May 'apply' for custody of or access to grandchildren
- Canadian courts are required by law to apply the "best interests of the child" standard to any decision with respect to access



Rights of Access



Legislation

- Grandparents may apply for custody or access under the *Federal Divorce Act* or under relevant provincial legislation (ex. B.C.'s *Family Relations Act*)
- Applications for access under the *Divorce Act* must be made in the context of divorce proceedings following marriage

(Law Reform Commission of Nova Scotia, Grandparent-Grandchild: Access – Final Report, April 2007)

Rights of Access

Legislation continued...



- The *Divorce Act* **does not apply to common law relationships**; common law relationships are governed by provincial legislation
- Provincial legislation applies where **no proceedings have yet been initiated** between the parents or if such proceedings have already been brought under provincial legislation

(J.P. Boyd, "Intergenerational Conflict, Part II: Grandparents' Rights to Custody and Access", Continuing Legal Education Society, February 2007)

Rights of Access



Legislation – Federal

Divorce Act :

- S.16 (1) &(2) allows “either or both spouses” or “**any other person**” to apply for custody or access
- However, s.16(3) provides that “a person, other than a spouse, may not make an application under subsection (1) or (2) **without leave of the court**”
- S.16(8) includes the requirement that “the court shall take into consideration only the *best interests of the child*”

Rights of Access

Legislation – Provincial and Territorial

- Some legislation, similar to the federal *Divorce Act*, requires leave of the court before a grandparent / grandparents can make a custody or access application
- Legislation in a number of other provinces and territories have expressly provided that grandparents may apply for custody of or access to their grandchildren (B.C., Alta., Man., Que., NB, Nfld., Yukon)
- The remaining provinces have legislation, with language similar to the *Divorce Act*, allowing application for access by grandparents, but without the requirement of leave of the court

Example - Yukon



Yukon Children's Act, R.S.Y. 2002, c. 31

Application to the court

33(1) A parent of the child, or any other person, including the grandparents may apply to the court for an order respecting custody of or access to the child or determining any aspect of the incidents of custody of the child.

(2) In an application under subsection (1) the court

- (a) May grant the custody of or access to the child to one or more persons;
- (b) May determine and make an appropriate order about any aspect of the incidents of the right to custody or access; and
- (c) May make any additional order the court considers necessary and proper in the circumstances.

Best interests of child

30(1) In determining the best interests of a child for the purposes of an application under this Part in respect of custody of or access to a child, the court shall consider all the needs and circumstances of the child including

- (a) The bonding, love, affection and emotional ties between the child and
 - (i) Each person entitled to or claiming custody of or access to the child,
 - (ii) Other members of the child's family who reside with the child, and
 - (iii) Persons, including grandparents involved in the care and upbringing of the child;

Example - Quebec



Civil Code of Quebec

- Article 611. In no case may the father or mother, without a grave reason, interfere with personal relations between the child and his grandparents.

Note : The law specifically states that parents cannot hinder a child's relationship with his grandparents without a serious reason.

If parents are making it difficult or impossible for you to see your grandchildren, you can present a request (motion) to the Superior Court of Quebec to get access rights. For more information about this court, consult Superior Court – Family Matters in Cotecour.

Don't worry! Even if you are granted access rights, you will not be obliged to make support payments for your grandchildren.

http://www.educaloi.qc.ca/en/loi/senior_citizens/143/

Rights of Access

Court Decisions / Approaches

- “best interests of the child” test - applied to the particular facts of each case - “what is in the best interests of the particular children before the court?”

(Justice Abella, *Chapman v. Chapman* (2001), Ont. C.A. at 448)

- Courts will generally defer significantly to the decisions of parents and only interfere if satisfied that it is clearly in the best interests of the child

(*Chapman v. Chapman* (1993), B.C.S.C. at para. 24)



Rights of Access



Court Decisions / Approaches

➤ “parental autonomy” vs. “pro contact” approach

Canadian courts have taken a “cautious pro-contact approach to grandparent access claims. In general terms, this approach appears to strike a good balance between protecting parental decision making on the one hand, and safeguarding relationships that are important to the child on the other.”

(Professor Martha Shaffer in Law reform Commission of Nova Scotia, Grandparent-Grandchild : Access – Final report, April 2007 at 18)

➤ In some cases, grandparent access may not be in the best interests of the child, and may in fact cause harm to the child

3. Common Tools - \$

- Establish 'inter vivos' trust
- Establish trust which endures
- Contribute / set up an RESP
- Will / Estate planning
- Joint ownership - assets



4. Importance of Making Wills

- Grandparents can leave money specifically to grandkids
- Default = kids and if predeceased then equally to grandkids
- Trusts in a will
- Bequests – family ring, art, etc.
- Plan for 'the family cottage' division

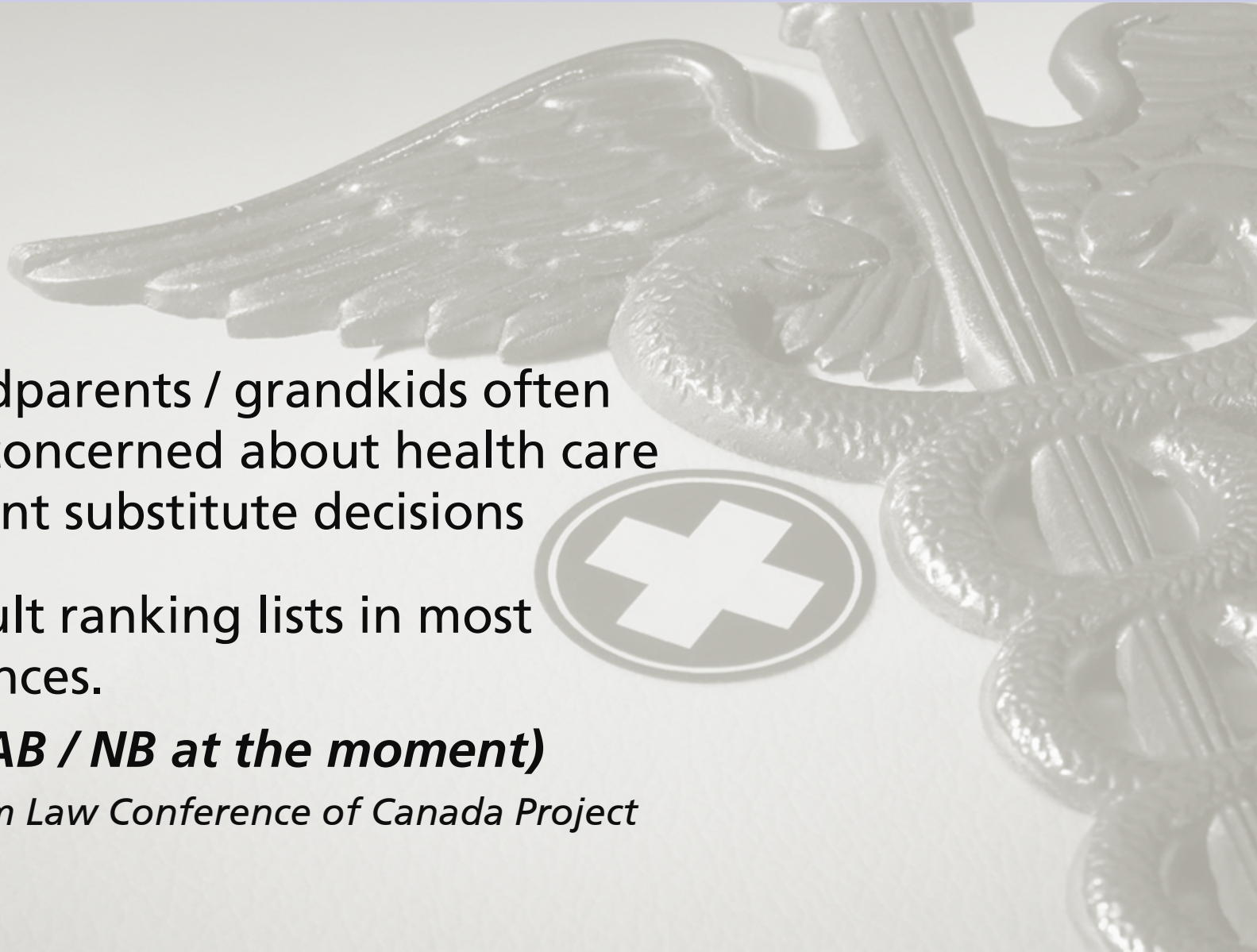


5. Substitute Health Decision Making

- Grandparents / grandkids often very concerned about health care consent substitute decisions
- Default ranking lists in most provinces.

(not AB / NB at the moment)

Uniform Law Conference of Canada Project



Substitute Health Decision Making

Ranking List for Health Care SDM

- Guardian
- Appointed substitute decision-maker (different names in each jurisdiction in Canada)
- Health Care Consent legislation (different names in each jurisdiction in Canada)



Substitute Health Decision Making



Changes in Defaults

Several jurisdictions are rethinking their default lists...

Substitute Health Decision Making



The BC Example : Current Default List in BC Health Care

- Representative – Appointed in a Rep Agreement
- Spouse
- Child
- Parent
- Brother or sister
- Anyone else related by birth or adoption to the adult
- Public Guardian and Trustee as last resort

Substitute Health Decision Making



The BC Example : Proposed New Default List

- Representative – Appointed in a Rep Agreement
- Spouse
- Child
- Brother or sister
- Anyone else related by birth or adoption to the adult
- Public Guardian and Trustee as last resort

Grandparent

Grandchild

Close friend

A person immediately related to the adult by marriage



6. Grandparents Abuse



What is Elder Abuse?

WHO Definition :

“a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person”

Grandparent Abuse

Abuse may be inflicted by a grandchild, spouse, an adult child, another family member or other person, often in a position of power or trust.

(Government of Canada, Seniors Canada, "Facts on the Abuse of Seniors")injury



Grandparent Abuse

Common types of elder abuse :

- Physical
- Sexual
- Emotional / psychological
- Financial
- Neglect (intentional or unintentional) or self- neglect

Grandparent Abuse

Indicators of Abuse:

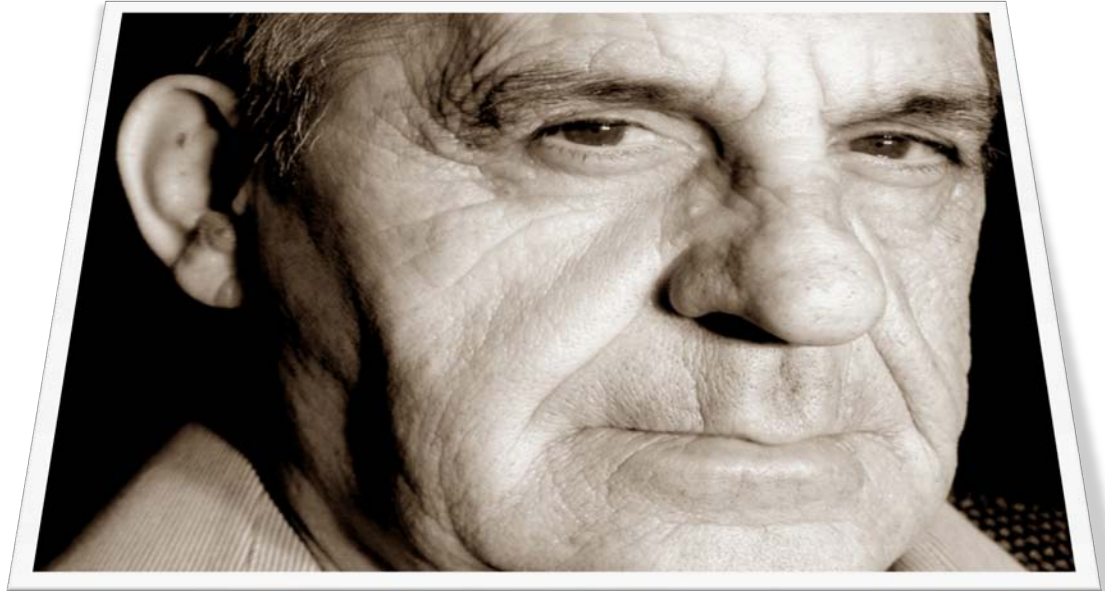
- Fear, anxiety, depression or passiveness in relation to a grandchild
- Unexplained physical injuries
- Dehydration, poor nutrition or poor hygiene
- Improper use of medication
- Confusion about new legal documents
- Sudden drop in financial holdings
- Reluctance to speak about the situation

(Government of Canada, Seniors Canada, "What are indicators of elder abuse and neglect?")

Grandparent Abuse

Working with, understanding and supporting a client experiencing grandparent abuse :

- Challenges
- Techniques
- Information & Resources



References and Resources

- www.cangrands.com
National Kinship Support Organization
- www.educaloi.qc.ca/en/loi/senior_citizens/143/#at
EDUCALOI – Quebec grandparents rights info
- www.canadianelderlaw.ca/Grandparents%20Rights.htm
Website hosted by Charmaine Spencer
- www.parentsupportbc.ca/grandparents.html
Grandparents Raising Grandkids (example – BC)
- www.parentsupportbc.ca/grandparents.html
Grandparent – Grandchild : Access, NS Law Reform Commission (2007)

Additional Resources

For information about how you can become a Certified Professional Consultant on Aging (CPCA) visit us at our website www.agefriendlybusiness.com

For information about the Canadian Centre for Elder Law visit us at our website www.bcli.org

THANK YOU!

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