

APPENDIX A

APPENDIX A: MANITOBA LAWS ON GRANDPARENTS' ACCESS

Below are sections 78 to 81 of The Child and Family Services Act which address grandparents' access.

The Child and Family Services Act (C.C.S.M. c. C80)

Access — purpose of section

- 78(1) The purpose of this section is
- (a) to facilitate relationships between children and their grandparents and other family members, when those relationships are in the child's best interests;
 - (b) to recognize, on applications by grandparents for access, that children can benefit from a positive, nurturing relationship with their grandparents; and
 - (c) to recognize that in exceptional circumstances children can benefit if non-family members are given access.

Access application by grandparent or other family member

- 78(1.1) Subject to subsection (6), a grandparent, step-parent or other member of a child's family who does not have a right to apply for access to the child under any other provision of this Act or under a provision of another Act may apply to court for access to the child.

Application for access by others

- 78(2) Subject to subsection (6), in exceptional circumstances, a person who does not have a right to apply for access to a child under any other provision of this Act or under a provision of another Act may apply to court for access to the child.

Notice

- 78(3) The person applying under subsection (1.1) or (2) shall give 10 days' notice of the hearing of the application to
- (a) the parents of the child;
 - (b) the guardian of the child;
 - (c) the child, if the child is 12 years of age or older;
 - (d) any person with access to the child under an order of any court; and
 - (e) any other person that the court directs.

Court may reduce or dispense with notice

78(3.1) Subsection 77(3) applies, with necessary changes, where notice is required under subsection (3).

Access order

78(4) On an application under this section, a judge may make an order granting an applicant access to a child in such manner, at such times and subject to such conditions as the judge considers to be in the best interests of the child, as determined in accordance with subsection (4.2).

Access provisions

78(4.1) An order for access may include, but is not limited to, provisions requiring that

- (a) the child spend specified periods of time, with or without supervision, with the applicant;
- (b) the child have the opportunity to have the applicant attend specified activities of the child;
- (c) the child be able to receive gifts from, or send gifts to, the applicant, directly or indirectly;
- (d) the child be able to receive communications from, or send communications to, the applicant, directly or indirectly, whether orally, in writing, or by another means of communication; or
- (e) a specified person provide the applicant with pictures of the child and information about the child's health, education and welfare.

Child's best interests

78(4.2) In making an order for access under this section, in addition to considering the best interests criteria set out in subsection 2(1), the court shall consider all relevant matters, including

- (a) the mental, emotional and physical needs of the child;
- (b) the nature of any pre-existing relationship between the applicant and the child; and
- (c) where the application is made by a grandparent, that a child can benefit from a positive, nurturing relationship with a grandparent.

Consent orders

78(5) Where all persons who have received notice of an application under this section consent to the terms of the order, a judge may, without receiving further evidence, make the order consented to.

Interim order

- 78(5.1) The court may make an interim order with respect to an application under this section, and the provisions of this section apply, with necessary changes, to the interim order.

No application during placement period

- 78(6) No application may be made under subsection (1.1) or (2) in relation to a child who is placed for adoption during the period beginning when the child is placed for adoption and ending when an order of adoption is made or the placement is otherwise terminated.

Variation

- 78(7) The court may on application vary or terminate an order under this section, and the provisions of this section apply with such modifications as the circumstances require to an application under this subsection.

Review of order

- 78(8) An order under this section may require the parties to return to the court after a specified interval for a review of the provisions of the order, and upon review the court may vary or terminate the order.

Court may direct investigation

- 79(1) In a proceeding under this Part, and upon being satisfied that it is necessary in order to determine the best interests of the child, a judge or master may direct an investigation into any matter by a person who has had no previous connection with the parties to the proceeding or to whom each party consents.

Refusal to co-operate

- 79(2) Where the court directs an investigation pursuant to subsection (1) and a party refuses to co-operate with the investigator, the investigator shall so report to the court which may draw any inference therefrom it considers appropriate.

Orders not to molest

- 80(1) Upon application by a person having lawful care and control of a child, a judge may make an order that a person shall not molest, annoy or harass the child and may require that person to enter into such recognizance, with or without sureties, or to post such bond as the court considers appropriate.

Interim order

80(2) The court may make an interim order with respect to an application under subsection (1).

Appeals

81 An appeal from an order under this Part lies to the Court of Appeal.

Subsection 2(1) of *The Child and Family Services Act* describes the best interests of the child as follows:

Best interests

- 2(1) The best interests of the child shall be the paramount consideration of the director, an authority, the children’s advocate, an agency and a court in all proceedings under this Act affecting a child, other than proceedings to determine whether a child is in need of protection, and in determining best interests the child’s safety and security shall be the primary considerations. After that, all other relevant matters shall be considered, including
- (a) the child’s opportunity to have a parent-child relationship as a wanted and needed member within a family structure;
 - (b) the mental, emotional, physical and educational needs of the child and the appropriate care or treatment, or both, to meet such needs;
 - (c) the child’s mental, emotional and physical stage of development;
 - (d) the child’s sense of continuity and need for permanency with the least possible disruption;
 - (e) the merits and the risks of any plan proposed by the agency that would be caring for the child compared with the merits and the risks of the child returning to or remaining within the family;
 - (f) the views and preferences of the child where they can reasonably be ascertained;
 - (g) the effect upon the child of any delay in the final disposition of the proceedings; and
 - (h) the child’s cultural, linguistic, racial and religious heritage.

For more information, or to read the full text of *The Child and Family Services Act* C.C.S.M. c. C80, see the following websites:

<http://web2.gov.mb.ca/laws/statutes/ccsm/co80e.php>

<http://web2.gov.mb.ca/laws/index.php> (Enter “Child and Family Services Act” in the search tool.)