

The Forgotten Grandparents Of Estranged Adult Children



(and extract from the book)

What the Law Says, and What It Doesn't

The first thing most grandparents do, once the shock of the situation has settled enough to think practically, is search for their rights. They type something into a search engine. They call a friend who knows a solicitor. They start reading. And what they find is rarely what they were hoping for.

This chapter is about the legal landscape for grandparents in five countries: the United Kingdom, Australia, the United States, New Zealand and Canada. It is the most factual chapter in this book. I have researched it carefully, but laws change, and I would ask you to treat what follows as a starting point for your own enquiries rather than as legal advice. For your specific situation, in your specific country and region, you will need to speak with a qualified family lawyer.

Before the country-by-country information, I want to say something that I think matters more than any of the legal detail that follows.

The legal route is rarely the right first move. Not because the law does not matter, and not because grandparents do not deserve better legal standing than most countries currently provide, but because pursuing a court order against the parents of your grandchildren is an adversarial process. It places you and the parents on opposite sides of a formal dispute. It can harden positions that might otherwise soften over time. It can make reconciliation, which is ultimately what most grandparents want, significantly harder to reach. And it can cost a great deal, financially and emotionally, with outcomes that are far less certain than many grandparents expect when they begin.

I am not saying do not pursue it. In some situations, where there is genuine concern about a child's welfare, or where all other avenues have been exhausted, the legal route may be the right one. What I am saying is go in with clear eyes. Know what it costs, what it risks, and what it realistically offers, before you commit to it.

With that said, you have a right to know what is available to you. So here it is.

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The United Kingdom

In England and Wales, grandparents have no automatic legal right to see their grandchildren. This surprises many people and it is worth saying plainly: there is no law that gives you, as a grandparent, an automatic entitlement to contact. Parents have the legal right to decide who their children see, and that includes deciding that grandparents will not see them.

What grandparents can do is apply to the Family Court for a Child Arrangements Order, which is the order that sets out who a child spends time with. However, grandparents cannot apply for this order directly. They must first apply for permission, known as leave to apply, from the court. In practice, courts rarely refuse this permission, but the step exists and must be taken.

Once permission is granted, the grandparent can apply for the Child Arrangements Order itself. The court will consider the application using the welfare checklist set out in the Children Act 1989, which places the child's welfare as the paramount consideration. The court will look at the nature of the relationship between the grandparent and the grandchild, the history of that relationship, and what effect continuing or ending the relationship is likely to have on the child.

There is also the option of a Special Guardianship Order, which gives the grandparent greater parental responsibility. This is typically used in more serious situations, such as where neither parent is able to care for the child, rather than in estrangement cases.

Before any court application can be made, the grandparent is required to attend a Mediation Information and Assessment Meeting, known as a MIAM. This is a legal requirement since 2014. The purpose is to explore whether the dispute can be resolved through mediation rather than the courts. If you attempt to make a court application without the MIAM certificate, the application will be rejected.

Scotland and Northern Ireland operate under different legislation, though the principles are broadly similar. In Scotland, the relevant legislation is the Children (Scotland) Act 1995. In Northern Ireland it is the Children (Northern Ireland) Order 1995. In both cases, grandparents do not have automatic rights and must apply to the Family Court for contact. Legal advice specific to those jurisdictions is important if that is where you are based.

The honest summary for the UK is this: the law does not stand behind you automatically, but it does provide a route. That route requires court permission, mandatory mediation assessment, and a process that can take many months and cost thousands of pounds. The outcome is never guaranteed.

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Australia

In Australia, grandparents have no automatic legal right to spend time with their grandchildren, even where a close relationship has existed for years. However, Australian family law takes a relatively clear position on the importance of children maintaining relationships with significant people in their lives, and this includes grandparents.

Under the Family Law Act 1975, grandparents have the right to apply directly to the Federal Circuit and Family Court of Australia for a parenting order. Unlike the UK, grandparents do not need to seek permission first. They can apply in their own right. The court will consider the application based on the best interests of the child, which is the paramount consideration in all Australian family law matters.

Grandparents can also apply for consent orders, which are agreements between all parties that are then made legally binding by the court, or for a parenting plan, which is a less formal written agreement that does not require court approval but sets out agreed arrangements.

Before making a court application, grandparents in Australia are required to attempt family dispute resolution, which is Australia's term for mediation. This is a legal requirement except in urgent circumstances involving safety concerns. The mediation process must be attempted and a certificate obtained before a court application can proceed.

The financial cost of pursuing a matter to a final hearing in Australia is considerable. Legal costs of between fifteen thousand and fifty thousand Australian dollars are not uncommon, and the process can take twelve to eighteen months. These figures are not intended to

discourage but to inform. Many grandparents begin the legal process without understanding the full commitment it requires, and finding out later is harder than knowing at the start.

The honest summary for Australia is this: grandparents have more direct access to the courts than in some other countries, the law explicitly recognises their importance in children's lives, but the process is still long, expensive, and uncertain in outcome.

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The United States

The United States is the most complicated country to summarise on this topic, because grandparent rights are entirely a matter of state law. There is no federal law governing grandparent access to grandchildren. Each of the fifty states has its own legislation, and those laws vary considerably from one another.

What all fifty states have in common is some form of grandparent visitation statute, meaning that grandparents can petition a court for visitation rights in at least some circumstances. Beyond that, the landscape becomes significantly more varied.

Some states have what are called permissive statutes, which allow grandparents to petition for visitation under a broad range of circumstances, sometimes even when the family is intact and no divorce or separation has occurred. Other states have restrictive statutes, which only allow grandparents to petition when a specific triggering event has occurred, such as divorce, the death of a parent, or the incarceration of a parent. Around twenty states fall into this more restrictive category.

The legal standard that courts in every state must apply was shaped significantly by a United States Supreme Court ruling in 2000, in a case called *Troxel v. Granville*. The Supreme Court ruled that fit parents have a fundamental right to make decisions about who their children see, and that this right must be given significant weight when courts consider grandparent visitation applications. This ruling has made it harder for grandparents to succeed in court applications against the wishes of parents who are considered fit, regardless of the state.

In practical terms, grandparents in the US who wish to pursue legal visitation rights need to understand the specific law in the state where the grandchildren live, consult a family lawyer licensed in that state, and be prepared to demonstrate not just that a relationship with them

would benefit the child, but that denial of that relationship would cause the child harm. That is a higher standard than many grandparents expect.

The honest summary for the United States is this: rights exist in all fifty states but they vary enormously, the Supreme Court has tilted the balance firmly toward parental rights, and legal action is a significant undertaking with uncertain outcomes. The state where the child lives is the starting point for any further enquiry.

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New Zealand

In New Zealand, grandparents have no automatic legal right to contact with their grandchildren. The relevant legislation is the Care of Children Act 2004, which governs all matters relating to the care and upbringing of children. The Act does not mention grandparents specifically, and it does not give them any automatic standing.

There is an additional complication in New Zealand that is worth understanding. Only parents or guardians can apply for a court order directly. Grandparents cannot apply for a contact order in their own right in the same way that parents can. To apply to the Family Court, grandparents need to either apply for leave, which is permission from the court to bring an application, or find a way to be included in an existing parenting arrangement through a parent who supports their involvement.

The Family Court will consider the best interests of the child as the primary consideration. Research and advocacy in New Zealand have increasingly recognised the importance of grandparent-grandchild relationships, and there is growing pressure on the legal system to provide better pathways for grandparents. However, as of the time of writing, the legal standing of grandparents in New Zealand remains more limited than in Australia or the UK.

Mediation and family dispute resolution are strongly encouraged before any court application, both as a matter of practice and in many cases as a formal requirement. The Grandparents Raising Grandchildren Trust, based in New Zealand, is a useful resource and can provide guidance on the options available.

The honest summary for New Zealand is this: the legal route is more restricted here than in other countries covered in this chapter, and grandparents face more obstacles in accessing the courts. Mediation and informal resolution are even more important as a result.

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Canada

Canada sits somewhere between Australia and New Zealand in terms of grandparent legal standing. Family law in Canada is primarily a matter of provincial legislation, which means the rules vary from province to province, though there are also federal provisions that apply in certain circumstances.

At the federal level, the Divorce Act was significantly amended in 2021 to allow non-parents, including grandparents, to apply for a contact order when divorce proceedings are before the court. A contact order allows a person other than a parent to spend time with the child. In some provinces, grandparents may need the court's permission to bring such an application if a parenting case is already underway.

At the provincial level, legislation varies. In Ontario, for example, the Children's Law Reform Act was amended to specifically name grandparents and to require courts to consider the emotional ties between a child and their grandparents when making decisions. In Ontario, a grandparent applying for a contact order must persuade the court both that they will have a positive impact on the child's life and that denying them access would result in significant harm to the child's physical or emotional wellbeing.

Other provinces have their own frameworks, and some are more supportive of grandparent applications than others. British Columbia, Alberta and Quebec each operate under their own provincial family law, and the details matter. A family lawyer in the specific province where the grandchildren live is the necessary starting point.

Mediation is available across Canada and widely encouraged as an alternative to court proceedings. It is generally faster, cheaper, and less damaging to family relationships than litigation.

The honest summary for Canada is this: the 2021 federal amendments have improved the position of grandparents, particularly in divorce cases, but the landscape still varies significantly by province, and legal advice specific to your province is essential.

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Mediation: the option worth considering first

Across all five countries, one thing is consistent. Mediation is recommended, required, or strongly encouraged before any court action is taken. And across all five countries, grandparents who have gone through both processes consistently say the same thing. Mediation, when it works, is better. Faster, cheaper, less damaging, and more likely to produce an outcome that everyone, including the grandchildren, can live with.

Family mediation brings a trained, neutral third party into the conversation. That person is not there to take sides or to make decisions. They are there to help both parties communicate in a way that the conversation has not been able to happen on its own. They create a structured, safe space where concerns can be expressed and heard, and where practical arrangements can be explored without the formality and confrontation of a courtroom.

Mediation is not suitable in every situation. Where there is a significant power imbalance, or where one party is unwilling to engage, it may not produce results. But in many grandparent estrangement situations, the breakdown has occurred because communication has broken down, not because the underlying desire to do what is right for the children is absent. Mediation addresses that.

If you are in the UK, the MIAM meeting is a legal requirement before court anyway. Use it as more than a box to tick. Approach it as a genuine attempt to find a way through. If you are in Australia, New Zealand, Canada or the US, seek out a family mediator who has experience with grandparent access disputes specifically. The cost is a fraction of court proceedings, and the outcomes can be considerably more lasting.

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A note on costs and emotional toll

This chapter has mentioned financial costs at various points, and I want to bring them together here, because they are real and they are rarely discussed honestly.

Legal proceedings involving grandparent access are rarely quick or cheap. In Australia, costs to a final hearing can exceed fifty thousand dollars. In the UK, legal fees for a contested Child Arrangements Order can run to tens of thousands of pounds. In the United States, the costs vary by state and by the complexity of the case, but contested family law matters are rarely inexpensive. In Canada and New Zealand, similar considerations apply.

Beyond the financial cost, there is the emotional cost. A court process against your own adult child, or their partner, is a confrontational experience. It requires you to build a legal case, to gather evidence, to be cross-examined, to present your relationship with your grandchildren as something to be judged by a stranger in a formal setting. Even when it succeeds, it can leave damage in the family that takes years to repair. Even when it fails, which it sometimes does, you have spent the money and the energy and the emotional resource, and the relationship with the adult child may be harder to navigate afterwards.

None of this means do not pursue it. It means pursue it with full knowledge of what you are undertaking. Take proper legal advice before you begin. Understand the likely timeline and the likely cost. Consider mediation first, seriously and genuinely. And make the decision with clear eyes rather than in the heat of the moment, because once you begin a court process, it is difficult to stop.

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Finally, a word about the law as it currently stands.

In no country covered in this chapter do grandparents have the legal standing that many people feel they deserve. The law in most places treats grandparent relationships as secondary to parental rights, and while courts increasingly recognise the importance of grandparent-grandchild bonds, that recognition has not yet translated into automatic legal protection in most jurisdictions.

This is changing, slowly. Advocacy for grandparent rights is growing in all five countries. Legal reforms are being discussed and in some cases enacted. The direction of travel is toward greater recognition, even if the current position remains limited.

Until the law catches up, grandparents are largely dependent on the goodwill of parents, or on a legal process that is difficult and uncertain. That is not fair. It is not right. And it is the reality that this chapter has tried to set out as plainly as possible, so that you can make informed decisions about the path ahead.

The law may not be on your side in the way you hoped. Knowing that clearly is better than finding it out halfway through a process you were not prepared for.

Go to stilltheparent.com and there are many resources that may help you

Also lindas-books.com under L.M.Harwood will have some books for estranged parents.