



## **DO I HAVE THE RIGHT TO SEE MY GRANDCHILDREN?**

**I would like to see my grandchildren, but the mother of the children is against it. What are my recourses as a grandparent?**

### **THE FACTS**

The parents of a four-year-old child had been separated since September 2006. The paternal grandparents wanted to see their grandchild.

In May 2007, the Superior Court had confirmed a Consent to Judgment in which the parents had agreed that the mother would have custody of the child, subject to the father's access rights. The father worked in Alberta.

The paternal grandparents and the mother had had a good relationship, but after the parties' separation, a feeling of uneasiness had arisen. As of June 2009, the situation had degenerated. Although they had visited their grandchild on a regular basis, the grandparents were faced with the mother's refusal to allow them access to the grandchild.

### **THE ISSUE**

The grandparents therefore decided to go to court in order to have the court determine the terms and conditions of the personal relations they wished to re-establish with the child. The *Civil Code of Québec* provides that in no case may the father or mother, without a grave reason, interfere with personal relations between the child and his grandparents. Failing agreement between the parties, the terms and conditions of these relations are decided by the court.

### **THE DECISION**

The Court concluded that the mother had not been able to show any reason, within the meaning of the *Civil Code of Québec*, that would justify having the Court terminate the relationship between the grandparents and the child, given that the grandparents did not present a moral or physical danger to the child.

The Court allowed the grandparents' motion for access and established their right to access their grandchild approximately one weekend a month, upon certain terms and conditions.

### **THE GROUNDS**

Following the parents' separation, contact between the grandparents and the child had degenerated. During a visit in March 2009, an incident had given rise to some tension. In June 2009, the mother had notified the grandparents that she was putting an end to their get-togethers with the child. However, the grandparents saw their grandchild again in July 2009, when their son spent a few days in Québec.

The grandparents argued that it was important for the child to maintain ties with the father's family, particularly since the father was located outside the province. They were not at all motivated by a desire to interfere in the mother's life, but merely wanted to be able to play their role as grandparents and allow the child to benefit from an emotional presence. The father did not object whatsoever to his parents'

The judgement discussed in this article was rendered based on the evidence submitted to the court. Each situation is unique. If in doubt, we suggest you consult a legal aid lawyer.

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## **DO I HAVE THE RIGHT TO SEE MY GRANDCHILDREN? (Cond't)**

request, considering this initiative to be in the child's best interests.

The mother, however, complained about the grandparents' behaviour, their lack of respect, the invasion of her privacy and the fact that the child did not have significant ties with the grandparents.

The mother had a new spouse and she claimed that the new spouse's parents acted towards the child as "paternal grandparents". She therefore no longer wished to maintain a relationship with the biological father's parents.

According to the *Civil Code of Québec*, it is deemed to be in the interests of a child that the child maintain a personal relationship with his or her grandparents. Barring grave reasons, the parents cannot interfere with personal relations between the child and his or her grandparents as regards the establishment of such a relationship.

The burden therefore lies on the parents to demonstrate the reasons that justify their opposition to a personal relationship between the child and his or her grandparents or the actual harmful effects such a relationship would have on the child, irrespective of the existence of conflicts between the parents and the grandparents. The concern cannot be merely subjective.

The courts have pointed out, however, that the access contemplated within the scope of the grandparent-child relationship is different from the access for a non-custodial parent. The right of access of grandparents cannot be of the same frequency or scope as the right of access of a non-custodial parent.

### **References**

*A. P. v. C. P.O. (Droit de la famille-10164), Superior Court (C.S.) 700-04-018930-096, February 1, 2010, Judge Lise Matteau (www.jugements.qc.ca)*

*Civil Code of Québec, (S.Q. 1991, c. 64), s.611*

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