

How to Become a Child's Guardian

This fact sheet helps you apply to court to become a child's guardian using the Family Law in BC website.



What's a guardian?

The BC Family Law Act defines a guardian as the person responsible for:

- caring for and bringing up a child, and
- making decisions about that child.

Who can be a guardian?

When parents live together, they're both guardians of their children, even if they're not married. This means they share responsibility for their children's care and upbringing. If the children's parents stop living together, both of them are still the children's guardians. It doesn't matter who moves out or who the children live with.

If a parent has never lived with their children, that parent is still a guardian if:

- they've taken care of their children regularly,
- there's an agreement or court order that says they're a guardian, or
- the other parent dies and they're named as a guardian in the will.

A parent who isn't a guardian can become one if they're named as a guardian in: a court order, an agreement, or a will. A person who isn't a parent can become a guardian only by court order or in a will. See family.legalaid.bc.ca (under Children, click Parenting & guardianship).

Who can apply to be a guardian?

Anyone can apply to the court to become a guardian. The court will carefully consider anyone who applies, such as:

- parents who aren't guardians;
- grandparents, siblings, and other family members;
- step-parents; or
- people who aren't family members.

→ Is the Ministry of Children and Family Development involved?

The **Extended Family Program** might be able to help you if you want to look after a relative's or friend's children for a while so they don't go into foster care. But you can't apply for this program if you're the children's guardian or plan to become one.

Before deciding what's best for you, see www2.gov.bc.ca (search for *Temporary & Permanent Care Options for Kids and Teens in BC*).

How do you apply?

To apply for guardianship, you need to file:

- an application to get a family order in either Provincial or Supreme Court, and
- a special guardianship affidavit.

STEP 1 Apply for a family order

First, decide which court to use. Go to family.legalaid.bc.ca (search for *Do you need to go to Provincial (Family) Court or Supreme Court?*). Then follow the step-by-step guide for the court you're using.

Supreme Court: Start a family law case to get a new order in Supreme Court and then Get a final family order in Supreme Court if you both agree.

Provincial Court: Get a family order in Provincial Court if you both agree OR Get a new family order in Provincial Court if you can't agree.



STEP 2 Fill out the special guardianship affidavit

You'll need **Form 5 for Provincial Court** or **Form F101 for Supreme Court**. See family.legalaid.bc.ca/forms.

You'll need to get these three background checks:

1) Criminal records check. Go to your nearest police station or RCMP detachment.

2) MCFD records check. Fill out a **Consent for Child Protection Record Check**. See www2.gov.bc.ca (search for **Form S51**).

3) Protection Order Registry records check. Fill out a **Request for Protection Order Registry Search**. See www2.gov.bc.ca (search for **pfa914**).

Then file these last two completed forms along with your application for a guardianship order. You can start the process for getting an order and file the affidavit later when the record checks are complete.

Background checks may take a while. Check in regularly with the court registry; the registry will give you copies when they're ready.

In the affidavit, include information about:

- the nature and length of your relationship with the child,
- where the child is living right now,
- your plans for how you're going to care for the child,
- any other children in your care,
- any history of family violence in the child's family, and
- any family or child protection court proceedings you've been involved in.

When you receive your three records checks, attach them to the affidavit as exhibits. Swear or affirm the affidavit. See family.legalaid.bc.ca (search for *Who can swear an affidavit?*). Or do this at the court registry.

Deadline for Provincial Court

Your records checks must be dated *no more than 60 days* before you file your affidavit (Form 5).

You must serve the filed affidavit along with the records checks to the other party *at least seven days* before the date of your hearing.

Deadline for Supreme Court

Your records checks must be dated *no more than 60 days* before the date of your hearing.

Can you get a temporary order?

You can get an **interim** (temporary) guardianship order without the affidavit if the judge is satisfied that it would be in the child's best interests. Apply for an interim order if you need to get an order quickly and don't have time to get all the background checks first. This order lasts for *no more than 90 days*.

During this time, complete the background checks and then fill out and file the guardianship affidavit.

In Provincial Court, you can ask for an interim order at the Family Management Conference. Go to family.legalaid.bc.ca (search for *Family management conferences in Provincial Court*).

Who can help?

Family duty counsel are Legal Aid BC lawyers who can help you with your application. They can give you free legal advice if you qualify, but they can't take on your whole case or represent you at trial. See legalaid.bc.ca (under Legal Aid, click Advice).

For more information, see family.legalaid.bc.ca (under BC Legal System, search for *Tips about getting legal help*).