

Parental Rights and Responsibilities under the *Family Law Act*
Effective March 18, 2013

I. Introduction

On March 18, 2013, the *Family Law Act* will come into force in British Columbia, replacing the *Family Relations Act*, which currently determines parental rights and responsibilities in B.C.

II. *Family Relations Act*

The *Family Relations Act* contains two different concepts which govern parental rights and responsibilities: custody and guardianship. A person who has custody has day-to-day care, control and supervision of the child. A person who has guardianship has the right to make decisions for the child regarding bigger issues, such as education, health care, and religious training. A parent who has guardianship, but not custody, would be able to contribute to a decision regarding what school the child should attend, but would not have a say regarding what the child eats for lunch or when the child goes to bed.

III. Who is a guardian?

Under the *Family Law Act*, the concept of custody is eliminated and we are left with an expanded concept of guardianship.

Parents

The default position is that while a child's parents are living together and after they separate, each parent is the child's guardian. This can be altered by an agreement or order made before or after the parents separate.

The exception is that a parent who has never resided with the child is not the child's guardian unless the parent and all the child's guardians have entered into an agreement that the parent is also a guardian or the parent regularly cares for the child.

Step-Parents

A person does not become a child's guardian simply because they marry or enter into a marriage-like relationship with the child's guardian. They must become a guardian under *Family Law Act*, the *Adoption Act* or the *Child, Family and Community Service Act*.

IV. What rights and responsibilities does a guardian have?

Guardianship has two components: parental responsibilities and parenting time.

Parental Responsibilities

In the absence of an order or agreement to the contrary, each guardian of a child may exercise all parental responsibilities with respect to the child in consultation with the child's other guardians.

Parental responsibilities may be allocated under an agreement or order so that they may be exercised by one or more guardians only, by each guardian acting separately, or all guardians acting together.

Parental responsibilities, as outlined in the *Family Law Act*, include:

- Having day-to-day care, control and supervision of the child;
- Making decisions regarding:
 - Day-to-day decisions affecting the child;
 - Where the child will reside;
 - Who the child will live and associate with;
 - The child's education and participation in extracurricular activities; and
 - The child's cultural, linguistic, religious and spiritual upbringing and heritage;
- Giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the child;
- Giving, refusing or withdrawing consent for the child;
- Receiving or responding to any notice that a guardian is entitled or required by law to receive; and
- Requesting and receiving from third parties health, education or other information respecting the child.

Parenting Time

Parenting time is simply the time that a child is with a guardian. During parenting time, a guardian may make day-to-day decisions affecting the child and have day-to-day care, control and supervision of the child, subject to an order or agreement that provides otherwise.

Allocation of Parental Responsibilities

A child's guardians may make an agreement or a court may make an order regarding the allocation of parental responsibilities and parenting time. Thus a person may be a guardian but only have the right to exercise certain parental responsibilities. In this situation, it would be wise to consult the agreement or order to determine what responsibilities each parent can exercise in relation to the child. For example, one parent may be able to receive information regarding the child but not make decisions regarding the child.

V. Transition

A parent who has custody or guardianship under an agreement or order made before the *Family Law Act* takes effect is a guardian under the *Family Law Act* and has parental responsibilities in relation to that child.

VI. Summary

If a child's parents live together...	Both parents are guardians and can receive information and make decisions regarding the child.
If the child's parents are separated and there is no agreement or court order in place...	Both parents are guardians and can receive information and make decisions regarding the child.
If the child's parents are separated and there is an agreement or court order in place regarding guardianship...	The agreement or order should be consulted to determine what each parent's responsibilities are as far as making decisions and receiving information is concerned.
If you are dealing with a parent who has never resided with the child...	That parent is not a guardian and cannot receive information or make decisions regarding the child unless certain conditions as outlined above apply.

Where there is joint guardianship and both guardians clearly have the legal right to make the decision pertaining to the treatment administered to the child and those guardians are in disagreement as to where and/or what services are to be provided to the child, the Centre should first make attempts to resolve the dispute by meeting with and/or corresponding with both parents. In the event that the Centre is unable to resolve the dispute, the dispute must be resolved between the guardians before services are administered. The guardians may resolve that dispute either by way of mediation, the assistance of counsel or by way of Court.