

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?

A guardian is a person (usually a parent) who is responsible for:

- caring for and bringing up a child, and
- making decisions in a child's best interests.

Who is a guardian already?

When parents of a child live together, both parents are the child's guardians, even if they're not married. If a child's parents stop living together, both of them are still guardians. It doesn't matter who moves out or who the child lives with.

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

- they regularly care for their child, or
- the parents have an agreement that the other parent is a guardian.

Step-parents do not automatically become guardians. They must apply for a court order.

Who can become a guardian?

Usually, a child's parents will be the child's guardians, but other people can be guardians, too. If you want to become a child's guardian, you have to apply to the court to get a family order 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
- 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 the MCFD is involved. It can give you financial support and resources if you want to look after a relative's or friend's child. But you can't apply for this program if you're the child's guardian.

Before deciding what's best for you, go to gov.bc.ca and search for Extended Family Program to learn more about it. Or, read our booklet *Keeping Aboriginal Kids Safe*, pages 18 to 19. You can order it online for free.

How do you apply to be a guardian?

STEP 1 Decide which court to use

You'll apply to either the Provincial Court or the Supreme Court to get an order for guardianship. See the Family Law in BC website for more information to help you decide. Go to family.legalaid.bc.ca. In the search bar, type Do you need to go to Provincial (Family) Court or Supreme Court?

It's also helpful to speak to a family duty counsel lawyer at your local courthouse.

STEP 2 Apply for a family order

First, you'll start a family law case, and then you'll apply to get a final family order.

Use one of the step-by-step guides on the Family Law in BC website to walk you through the process.

For **Provincial Court**, go to family.legalaid.bc.ca. In the search bar, type Start a family law case to get a new order in Provincial Court.



For **Supreme Court**, go to family.legalaid.bc.ca. In the search bar, type Start a family law case to get a new order in Supreme Court.

The process is complicated and will take some time. A family duty counsel lawyer might be able to help.

STEP 3 Get three background checks

1) A Ministry of Children and Family Development records check

Fill out a Consent for Child Protection Record Check. To download the PDF, go to www2.gov.bc.ca. In the search bar, type Provincial Family Forms. Click Provincial Family Forms – Province of British Columbia. On that page, click Section 51 – consent for child protection record check.

2) A Protection Order Registry records check

Fill out a Request for Protection Order Registry Search. To download the PDF, go to www2.gov.bc.ca. In the search bar, type Provincial Family Forms. Click Provincial Family Forms - Province of British Columbia. On that page, click Request for protection order registry search.

Take these two completed forms and file them at the court registry where you filed your application to become a guardian. The registry will give you copies when they're ready.

3) A criminal records check

Go to your nearest police station or RCMP office and ask at the front desk.

When they are ready, attach copies of all three background checks to your affidavit (see step 4).

STEP 4 Fill out an affidavit

An **affidavit** is a form you fill out that includes facts you swear to be true. In the affidavit, you'll fill out the following information:

- the nature and length of your relationship with the child,
- the child's current living arrangements,

- information about any other children in your care,
- a detailed plan for how you're going to care for the child,
- information about any incidents of family violence that may affect the child, and
- information about any family or child protection court proceedings you've been involved in.

Download the PDF to fill out:

For **Provincial Court**, go to family.legalaid.bc.ca (click BC Legal System, then Legal forms & documents, then Find a court form, then Provincial, then 34: Affidavit).

For **Supreme Court**, go to family.legalaid.bc.ca (click BC Legal System, then Legal forms & documents, then Find a court form, then Supreme, then F101: Affidavit).

Take the affidavit (with copies of your three background checks) to the court registry and file it where you filed your application.

How long does it take?

The process could take a few months. You can apply for an interim (temporary) order while you're waiting.

How do you get a temporary order?

If you want to get an order quickly, apply for an **interim** (temporary) order. Do this if you don't have time to get all the background checks first. This order will last 90 days. During this time, you must complete the background checks and then fill out and file the affidavit, (including copies of your background checks). For more information, go to family.legalaid.bc.ca and in the search bar type Final and interim court orders.

Family duty counsel can help

Family duty counsel can help with your application. They're lawyers Legal Aid pays to help people with lower incomes with their family law matters. They can give you free legal advice if you qualify. See legalaid.bc.ca (under Legal Aid, click Advice).

You can also go to family.legalaid.bc.ca/visit for a list of services that can help.