

CONSENT FOR MINOR PATIENTS

Informed consent is a commonly discussed issue. However, consent on behalf of minor children is a far less discussed issue. The Canadian Medical Protective Association (CMPA) has produced a thorough guide for physicians on the issue of informed consent (*see Consent: A Guide for Canadian Physicians – 3rd Edition*). The CMPA Guide briefly discusses consent on behalf of minor children and the related topic of a mature minor. This discussion paper, prepared on behalf of the College of Physicians and Surgeons of Alberta, is intended to be read in conjunction with the CMPA Guide on consent. Specifically, this paper deals with the complex and confusing area of consent on behalf of minor children.

THE LAW IN ALBERTA

In Alberta, a minor child is any person who is under the age of eighteen. The law recognizes that there comes a time in the maturation process when teenagers should have more and more say over decisions affecting their own bodies. When a teenager has reached the point where he or she has sufficient intelligence and understanding to appreciate the nature and consequences of what medical treatment is proposed, the individual is considered a mature minor (the “mature minor doctrine”). There is no set age for a mature minor in Alberta. The more serious the proposed treatment, the greater the level of maturity that is required before a child can be considered a mature minor. Generally, the threshold for recognition of maturity by the Courts is at least sixteen years and none have recognized any individual younger than fourteen years. Child welfare authorities in Alberta consider twelve years of age sufficient for a child to be consulted on decisions that affect the child, although the child’s opinion is not determinative of what does occur. This is typically applied in situations involving the disclosure of information or in decisions around the custody of the child.

Child welfare legislation in Alberta has recently been amended so that a minor child, who is in the custody of the child welfare authorities, has the ability to object to essential medical, surgical, dental or other remedial treatment, regardless of the age of the child. If the child in that situation refuses to consent to the essential treatment, a Director of the child welfare authority must apply to the Court for an Order authorizing the treatment. It is expected that refusal by a child to undertake treatment authorized by the Director will be a relatively rare situation faced by a physician.

The Family Law Act became law in Alberta on October 1, 2005. In part, it replaced the Domestic Relations Act. The Family Law Act puts the father on the same legal footing as the mother in regards to guardianship. However, determining whether the mother or father is a guardian under the Family Law Act can be a complicated process. Section 20 of the Family Law Act sets out the list of factors to consider (See Schedule A below).

The Family Law Act contains far more detailed provisions regarding guardianship than were ever contained in the Domestic Relations Act. Some of the new provisions confirm what had developed over years through Court decisions. Other provisions may have created new law or modified existing law, including the mature minor doctrine. Unfortunately, it will likely require a Court decision to clarify what changes, if any, have occurred to the mature minor doctrine as a result of the Family Law Act. Regrettably, the medical profession was not consulted about how the guardianship provisions in the Family Law Act would affect the principles of informed consent and doctor-patient confidentiality.

The Family Law Act distinguishes between the responsibilities of a guardian and the powers of a guardian. In other words, what a guardian must do, as compared to what a guardian is empowered to do. Overriding these two functions is that any decision of a guardian must be in the best interests of a child. Section 18 of the Family Law Act outlines the factors that are to be considered when determining what is in the best interests of the child.

WHO CAN GIVE CONSENT FOR A CHILD?

The guardian of a child, or one of the guardians if there is more than one, can give or refuse to give consent for treatment. In either case, the decision must be made in the best interests of the child. If a guardian is not acting in the best interests of a child, with the result that the physician has reason to believe that the child may be in need of intervention by a Director of the child welfare authority, the physician will be under a duty to report the matter to the child welfare authority (*See section 4 of the Child, Youth and Family Enhancement Act*).

It remains an important exception, however, that a mature minor who is not a ward of a Director under the child welfare legislation, is entitled to give or refuse to give consent and a guardian has no authority to override or veto the mature minor's decision.

There are several situations where a child, who is not a mature minor, may come to a physician's office with an adult, who appears to be an eligible guardian. A person is entitled to be a guardian of a child by:

- (a) fulfilling the requirements set out in the Family Law Act,
- (b) agreement,
- (c) appointment under a will, or
- (d) court order.

The scenarios discussed below are:

1. a natural parent,
2. an adoptive parent;

3. a step-parent;
4. a divorced parent (*natural or adoptive*);
5. a former common-law parent (*natural or adoptive*);
6. a guardian appointed under an agreement, will or Court Order;
7. a foster parent, and
8. other adults.

1. NATURAL PARENTS

Under section 20(2) of the Family Law Act, the birth mother and father are automatically the guardians of the child where:

- “(a) the mother and the father were married to each other at the time of the birth of the child,
- (b) the mother and the father were married to each other and the marriage was terminated by
 - (i) a decree of nullity of marriage granted less than 300 days before the birth of the child, or
 - (ii) a judgment of divorce granted less than 300 days before the birth of the child,
- (c) the mother and the father married each other after the birth of the child,
- (d) the mother and the father cohabited with each other for 12 consecutive months during which time the child was born, or
- (e) the mother and the father were each other’s adult interdependent partners at the time of the birth of the child or became each other’s adult interdependent partners after the birth of the child.”

If neither the mother, nor the father fit the criteria of guardianship under paragraphs (a) through (e) above, guardianship can be created under section 20(3) of the Family Law Act. That section states that the mother and the father are both the guardians of the child until the child begins to usually reside with one of the parents, at which time that parent becomes the sole guardian of the child. However, the parents can agree in writing that both parents continue to be the guardians of the child even after the child begins to usually reside with only one of them.

If the mother and the father do not fit the criteria for guardianship under paragraphs (a) and (e) above, and the child has resided with one of the parents since birth, then that parent is the sole guardian. However, to make the matter more confusing, section 20(3)(b) of the Family Law Act states that if the child has alternately resided with each parent for substantially equivalent periods of time, then both parents are guardians of the child.

The Family Law Act leaves the physician in a difficult and confusing situation simply trying to figure out if the birth mother and father are guardians of a child. It would be reasonable for the physician to assume that the mother or father is a guardian of the child if the child is currently residing with that parent.

2. ADOPTIVE PARENTS

An adopting parent gains guardianship of an adopted child as a result of a Court Order granted under the *Child, Youth and Family Enhancement Act (formerly the Child Welfare Act)*. The guardian(s) of the child being put up for adoption, e.g. the birth mother, can revoke consent to the adoption for a period of ten (10) days. The guardianship of the adopting parent thereafter becomes permanent unless and until a Court terminates the guardianship status of the adopting parent. Accordingly, the best practice is to obtain a copy of the Adoption Order and confirm with the adoptive parent that the Order is still valid.

3. STEP-PARENT

Unless a step-parent has become an adoptive parent under the *Child, Youth and Family Enhancement Act*, a step-parent would not have guardianship over a minor step-child. A step-parent is not able to give or withhold consent on behalf of the minor step-child. Accordingly, the physician would require the informed consent of the natural parent who has guardianship over that child before providing treatment to the child.

A step-parent may be a person who is standing in the place of a parent. Section 48 of the Family Law Act states that a person who is standing in the place of a parent can be held responsible for supporting the child, but that does not create guardianship. A specific Court order declaring that person to be a guardian of the child is required.

4. DIVORCED CUSTODIAL PARENT (NATURAL OR ADOPTIVE)

When a father and mother end their marriage by divorce, the Court can order, among other things, that the father and mother have joint custody or one of the parents have sole custody with reasonable access granted to the other parent.

The legal concept of guardianship is not identical to the legal concept of custody. The definition of “custody” under the *Divorce Act* has been described as “almost the equivalent of guardianship”. However, an Order of sole custody does not mean that the non-custodial parent’s guardianship rights are fully extinguished. There are several continuing rights of guardianship which survive an Order of sole custody. Under the *Divorce Act*, unless the Court orders otherwise, the parent with access rights has the right to make inquiries and to be given information about the health, education and welfare of the child. This is a “right to know”, but not a “right to be consulted”. A non-custodial parent with a right of access always has the

right to contest a decision of the custodial parent in Court by showing that the decision is contrary to the best interests of the child. However, the Courts in Canada have never adopted the view that the sole custodial parent's decisions are subject to the approval of the non-custodial parent.

Accordingly, if the custodial parent is consenting to treatment for the minor child, which would appear to be in the best interests of the child, the non-custodial parent can not stop the treatment by advising the physician that the non-custodial parent does not consent to that treatment. Section 21(2) of the Family Law Act requires guardians to share information and cooperate to ensure that the best interests of the child are served. Unfortunately, the sharing of information and cooperation does not always occur.

Where parents have been granted joint custody after divorce, each parent continues to have the full complement of guardianship rights as existed during the marriage. Each parent has the right to consent to treatment. The parent who has primary care of the child does not have the authority to prevent or override the consent of the other joint custody parent who has consented to treatment of the child, which is in the best interests of the child.

As a guiding principle, the physician should ask for a copy of the Court Order declaring parental rights upon divorce when treating a minor child of divorced parents. If the constraints of time do not allow for a copy of the Court Order to be reviewed, then the physician should document on his or her patient chart the terms of the Custody Order as described by the parent who brought the child to the physician. It can not be forgotten that a parent, as guardian, whether before or after divorce, must always make decisions in the best interests of the child.

5. COMMON-LAW RELATIONSHIPS

This type of relationship is now governed by the Adult Interdependent Relationships Act. This piece of legislation was enacted following a number of Court decisions across Canada which found individuals in same sex relationships were entitled to the same legal rights as those individuals in heterosexual relationships. The Adult Interdependent Relationships Act applies to all common-law relationships. Generally, the relationship needs to be at least 3 years in duration, or be of "some permanence, if there is a child of the relationship by birth or adoption". It is unclear as to what period of time will fulfill the "some permanence" criteria. A decision from Justice Sanderman of the Court of Queen's Bench in March of 2005 (Re: Staples) suggests that parents who have lived together for two months after the birth of a child have established sufficient permanence to be deemed an adult interdependent relationship. The decision does not indicate how long the parents had lived together before the birth of the child, but it was less than three years.

Section 20(2)(e) of the Family Law Act states that parents of a child in an adult interdependent relationship are automatically the guardians of that child. However, if both individuals in the adult interdependent relationship are not also the natural parents of the child, then the non-parent has no guardianship rights, although could become a guardian by Court Order.

6a. GUARDIANSHIP UNDER COURT ORDER

This general category includes adoptive parents, step-parents and guardians appointed for children after apprehension by a child welfare authority. In all of these situations, the physician is advised to review a copy of the Court Order granting guardianship. Again, if the constraints of time do not allow for a copy of the Court Order to be obtained, then the physician should document on his or her record the terms of the Custody Order as described by the guardian who brought the child to the physician.

6b. GUARDIANSHIP UNDER A WILL

Section 22 of the Family Law Act deals with a guardian appointed under a will. Although guardianship arises upon the death of the parent who made the will, there is still the question of whether the will is valid. This is addressed through the process of probating a will, or proving to the Court that the will was validly made and should be followed.

If a physician is dealing with a guardian appointed under a will, a copy of the will should be reviewed. Ideally, the physician could also review a copy of the Grant of Probate to confirm that the will was found to be valid and the adult has the authority to consent on behalf of the minor child.

6c. GUARDIANSHIP BY AGREEMENT OR TEMPORARY APPOINTMENT

There are two types of agreement. The first is a guardianship agreement between a director of the child welfare authority and a foster parent(s). The second type of agreement is under the Family Law Act. Section 20(5) allows parents to agree that both continue to be guardians even though the child begins to reside usually with only one of them. Section 21(2)(d) allows guardians to agree to allocate between them the powers, responsibilities and entitlements of guardianship.

Although not an agreement in the true sense, section 21(6)(k) of the Family Law Act allows a guardian to appoint a person to act on behalf of the guardian in an emergency situation or where the guardian is temporarily absent due to illness or other reason. The individual is given temporary power to act as agent of the guardian. The physician must be certain that the appointment is valid before providing non-emergent treatment. For instance, a note from the guardian clearly authorizing the proposed treatment, e.g. a vaccination or check-up, should be obtained and kept on the patient record. The physician should confirm that the guardian is unavailable due to an emergency, illness or similar reason. Given the wording of section 21(6)(k), the Legislature did not appear to intend this provision to allow for the nanny or girlfriend/boyfriend of the guardian to be appointed simply because the guardian is at work or too busy to attend the medical appointment. For now, it is best to assume that “similar

reasons” are limited to absence of a more remote nature, such as the guardian being on a distant vacation. Physicians should expect that the guardian is the only person who should consent on behalf of the minor and, in doing so, has considered the risks and benefits of the treatment or intervention in the context of the child’s best interests.

7. FOSTER PARENT

A foster parent gains guardianship rights over a child through a Court Order or an agreement with a Director of the child welfare authority. This type of agreement is governed by the Child, Youth, and Family Enhancement Act. The physician should obtain a copy of the Court Order or agreement to confirm guardianship and the ability of the foster parent to consent to treatment for the child.

8. OTHER ADULTS

This will apply to a baby sitter/nanny, a grandparent of the child, neighbour and a girlfriend/boyfriend of the parent. These adults have no guardianship over the child, except in very limited situations outlined above. It must be recalled that even though an adult, i.e. the boyfriend/girlfriend, may be living with the parent and the child, no guardianship rights or powers arise from the relationship between the parent and the other adult, even if it has been occurring long enough to be considered an adult interdependent relationship.

If the physician is dealing with this situation, the physician will need to determine if there is consent from the parent, e.g. clear written consent, or the adult has authority under section 21(6)(k) of the Family Law Act (*see item 6c above*). The physician should obtain a copy of the written appointment from the parent specifically identifying the other adult and his/her authority to bring the child to the physician for treatment. The physician should confirm and record in the patient record the circumstances that apply in the situation if there is no written appointment.

EMERGENCY SITUATION

Notwithstanding any of the above, if a physician is presented with a child who needs emergency medical services, the law implies consent for treatment to the extent necessary to prevent death or further injury or disability of the child. Once the emergency situation has passed, then the physician should consult the child’s guardian for consent for further treatment.

GENERAL ASSUMPTION

It is reasonable for the physician to assume that a parent of a minor child is the lawful guardian of the child and can consent to treatment. It is only when a physician becomes aware of circumstances that would suggest that the adult accompanying the child does or may not have guardianship of the child, that the physician is then required to make further inquiries before providing any non-emergency treatment.

SUMMARY CHART

STATUS OF ADULT	GUARDIANSHIP	FURTHER INQUIRY
Natural father and natural mother	Possible guardianship	Does the individual fit into one of the categories in section 20 of the Family Law Act? (See Schedule A below) Is there an agreement regarding guardianship?
Adoptive mother	Guardian by Court Order	Review copy of Court Order.
Adoptive father	Guardian by Court Order	Review copy of Court Order.
Divorced mother	Guardian, unless removed by Court Order	Joint custody or sole custody? If sole custody, does non-custodial parent have right of access? Review copy of Court Order.
Divorced father	Guardian, unless removed by Court Order	Joint custody or sole custody? If sole custody, does non-custodial parent have right of access? Review copy of Court Order.
Non-parent, including stepparent, foster parent or Child Welfare authority	No rights of guardianship unless by Court Order, appointment under will, agreement or temporary appointment.	Review copy of Court Order, Will/Grant of Probate, or agreement/appointment before treatment, if time and circumstances permit.

Ideally, a copy of the Court Order, Will/Grant of Probate, Agreement or Temporary Appointment should be attached to the patient's chart. If a copy of the document is not readily available, then a detailed chart note should be made regarding the circumstances establishing guardianship rights of the adult who has brought the minor child to the physician for treatment.

PATIENT CONFIDENTIALITY AND A MATURE MINOR

Unfortunately, the matter of privacy of health information for minors does not follow simply from an understanding of the consent issues. It is commonly assumed that the mature minor doctrine includes a duty of confidentiality owed to a mature minor which, therefore, would deny a guardian access to the mature minor's personal health information. However, the Courts have never declared this to be part of the mature minor doctrine. The Court of Appeal in *J.S.C. v. Wren* declared in 1986 that the mature minor doctrine was part of the law in Alberta, but also stated that "parental rights (and obligations) clearly do exist and they do not wholly disappear until the age of majority". There have been no Court decisions in Alberta stating that the mature minor can legally instruct a physician to keep information from the guardian.

The law in Alberta is comprised of the common law, i.e. court decisions over the years and statutory law. A statute will only change the common law when the language in the statute makes that intention clear. The mature minor doctrine is part of the common law in Alberta. The mature minor doctrine does not appear to be altered by the Family Law Act. For example, section 21(6) states that the powers of a guardian, which include the ability to consent to medical treatment (section 21(6)(g)), may be "limited by law". Further, section 21(7) states that the guardian must exercise the powers of guardianship in a manner consistent with the evolving capacity of the child. Both of these provisions suggest that the mature minor doctrine is still alive and well in Alberta.

Privacy legislation in Alberta confirms the duty of a physician to keep personal health information about a patient, including a mature minor, confidential. Section 104 of the Health Information Act and section 61 of the Personal Information Protection Act both state that a guardian can not consent to disclosure of personal health information about the mature minor. The guardian can only consent to disclosure on behalf of a child who is not a mature minor.

Even if a mature minor does not consent to disclosure of his/her personal health information, section 35 of the Health Information Act and section 20 of the Personal Information Protection Act permit the physician to disclose to a third party, e.g. the guardian, in certain circumstances. One of the permitted exceptions is where the disclosure is authorized or required under another statute. Section 21(4) of the Family Law Act states that each guardian is entitled to be informed of, consulted about, and to make all significant decisions relating to responsibilities of the guardian set out in section 21(5) of the Family Law Act. Those responsibilities are to nurture the child towards independent adulthood, and to ensure the child has the necessities of life, including medical care.

It is unclear whether the Family Law Act authorizes or requires a physician to disclose personal health information about a mature minor when there is no consent from the mature minor to do so. There are compelling arguments on both sides of the issue. It will likely take a Court decision or an amendment to the legislation to answer this question.

Because there are no penalty provisions under the Family Law Act, a physician faces no fine or imprisonment for fulfilling the duty of confidentiality of the mature minor. However, there are significant fines that can be imposed under the Health Information Act and the Personal Information Protection Act for breach of those statutes.

In our opinion, the prudent physician should err on the side of caution and uphold the duty of confidentiality owed to the mature minor, even where the guardian is the one seeking the information. The physician should ask the mature minor if disclosure can be made to the guardian. The physician should record the consent or the refusal of consent from the mature minor on the patient record. A signed consent form in this case would be the best practice.

Schedule A

Excerpt from the Family Law Act (Alberta)

“Division 1 Guardianship

Definitions

16 In this Part,

- (a) “guardianship order” means an order made under section 23;
- (b) “place of residence”, in respect of a child, means the place where a child is living, either temporarily or permanently;
- (c) “proposed guardian” means a person who applies or on whose behalf someone else applies for an order appointing the person as a guardian of a child.

Notice of application

17(1) Unless the court directs otherwise, the following persons must, in accordance with the regulations, be served with notice of an application under this Part:

- (a) each guardian of the child;
- (b) in the case of an application under Division 1 or 3, the child, if the child is 16 years of age or older;
- (c) in the case of an application for a guardianship order, each proposed guardian, and a director under the *Child, Youth and Family Enhancement Act* if the child is in or comes into the custody of a director at any time after the application is commenced;
- (d) repealed
- (e) any other person, other than a director under the *Child, Youth and Family Enhancement Act*, whom the court considers appropriate.

(2) Before making an order under this Part, the court must consider whether it is appropriate for a child who has not been served under this section to be given notice of the application.

Best interests of the child

18(1) In all proceedings under this Part, the court shall take into consideration only the best interests of the child.

(2) In determining what is in the best interests of a child, the court shall

- (a) ensure the greatest possible protection of the child's physical, psychological and emotional safety, and
- (b) consider all the child's needs and circumstances, including
 - (i) the child's physical, psychological and emotional needs, including the child's need for stability, taking into consideration the child's age and stage of development,
 - (ii) the history of care for the child,
 - (iii) the child's cultural, linguistic, religious and spiritual upbringing and heritage,
 - (iv) the child's views and preferences, to the extent that it is appropriate to ascertain them,
 - (v) any plans proposed for the child's care and upbringing,
 - (vi) any family violence, including its impact on
 - (A) the safety of the child and other family and household members,
 - (B) the child's general well-being,
 - (C) the ability of the person who engaged in the family violence to care for and meet the needs of the child, and
 - (D) the appropriateness of making an order that would require the guardians to co-operate on issues affecting the child,
 - (vii) the nature, strength and stability of the relationship
 - (A) between the child and each person residing in the child's household and any other significant person in the child's life, and
 - (B) between the child and each person in respect of whom an order under this Part would apply,
 - (viii) the ability and willingness of each person in respect of whom an order under this Part would apply
 - (A) to care for and meet the needs of the child, and
 - (B) to communicate and co-operate on issues affecting the child,
 - (ix) taking into consideration the views of the child's current guardians, the benefit to the child of developing and maintaining meaningful relationships with each guardian or proposed guardian,
 - (x) the ability and willingness of each guardian or proposed guardian to exercise the powers, responsibilities and entitlements of guardianship, and
 - (xi) any civil or criminal proceedings that are relevant to the safety or well-being of the child.

(3) In this section, “family violence” includes behaviour by a family or household member causing or attempting to cause physical harm to the child or another family or household member, including forced confinement or sexual abuse, or causing the child or another family or household member to reasonably fear for his or her safety or that of another person, but does not include

- (a) the use of force against a child as a means of correction by a guardian or person who has the care and control of the child if the force does not exceed what is reasonable under the circumstances, or
- (b) acts of self-protection or protection of another person.

(4) For the purpose of subsection (2)(b)(vi), the presence of family violence is to be established on a balance of probabilities.

Children subject to guardianship

19 Every child is subject to guardianship except a child who becomes a spouse or adult interdependent partner.

Guardians of child

20(1) This section is subject to any order of the court regarding the guardianship of a child.

(2) The mother and the father of a child are both the guardians of the child where

- (a) the mother and the father were married to each other at the time of the birth of the child,
- (b) the mother and the father were married to each other and the marriage was terminated by
 - (i) a decree of nullity of marriage granted less than 300 days before the birth of the child, or
 - (ii) a judgment of divorce granted less than 300 days before the birth of the child,
- (c) the mother and the father married each other after the birth of the child,
- (d) the mother and the father cohabited with each other for 12 consecutive months during which time the child was born, or
- (e) the mother and the father were each other’s adult interdependent partners at the time of the birth of the child or became each other’s adult interdependent partners after the birth of the child.

(3) Where the mother and the father of a child are not the guardians of the child under subsection (2), the mother and the father are both the guardians of the child until such time as the child begins to usually reside

- (a) with one of the parents, at which time that parent becomes the sole guardian of the child, or
 - (b) with both parents or alternately with each parent for substantially equivalent periods of time, at which time both parents become the guardians of the child.
- (4) Despite subsection (3), a parent with whom the child has usually resided for one year is a guardian of the child even if the child no longer resides with that parent.
- (5) Despite subsection (3)(a), if both parents so agree in writing, both parents continue to be the guardians of the child even after the child begins to usually reside with only one of them.

Powers, responsibilities and entitlements of guardianship

- 21(1) A guardian shall exercise the powers, responsibilities and entitlements of guardianship in the best interests of the child.
- (2) Where a child has more than one guardian, the guardians
- (a) may each exercise the powers, responsibilities and entitlements of a guardian, unless the court orders otherwise,
 - (b) shall provide information to any other guardian relating to the exercise of powers, responsibilities and entitlements of guardianship, at the request of that other guardian,
 - (c) shall use their best efforts to co-operate with one another in exercising their powers, responsibilities and entitlements of guardianship, and
 - (d) may enter into an agreement with respect to the allocation of powers, responsibilities and entitlements of guardianship among themselves.
- (3) A guardian who is neither a parent of the child nor a person standing in the place of a parent referred to in section 48 has no legal duty to support the child from the guardian's own financial resources.
- (4) Except where otherwise limited by a parenting order, each guardian is entitled
- (a) to be informed of and consulted about and to make all significant decisions affecting the child in the exercise of the powers and responsibilities of guardianship described in subsection (5), and
 - (b) to have sufficient contact with the child to carry out those powers and responsibilities.
- (5) Except where otherwise limited by law, including a parenting order, each guardian has the following responsibilities in respect of the child:
- (a) to nurture the child's physical, psychological and emotional development and to guide the child towards independent adulthood;

- (b) to ensure the child has the necessities of life, including medical care, food, clothing and shelter.
- (6) Except where otherwise limited by law, including a parenting order, each guardian may exercise the following powers:
- (a) to make day-to-day decisions affecting the child, including having the day-to-day care and control of the child and supervising the child's daily activities;
 - (b) to decide the child's place of residence and to change the child's place of residence;
 - (c) to make decisions about the child's education, including the nature, extent and place of education and any participation in extracurricular school activities;
 - (d) to make decisions regarding the child's cultural, linguistic, religious and spiritual upbringing and heritage;
 - (e) to decide with whom the child is to live and with whom the child is to associate;
 - (f) to decide whether the child should work and, if so, the nature and extent of the work, for whom the work is to be done and related matters;
 - (g) to consent to medical, dental and other health-related treatment for the child;
 - (h) to grant or refuse consent where consent of a parent or guardian is required by law in any application, approval, action, proceeding or other matter;
 - (i) to receive and respond to any notice that a parent or guardian is entitled or required by law to receive;
 - (j) subject to the *Minors' Property Act* and the *Public Trustee Act*, to commence, defend, compromise or settle any legal proceedings relating to the child and to compromise or settle any proceedings taken against the child;
 - (k) to appoint a person to act on behalf of the guardian in an emergency situation or where the guardian is temporarily absent because of illness or any other reason;
 - (l) to receive from third parties health, education or other information that may significantly affect the child;
 - (m) to exercise any other powers reasonably necessary to carry out the responsibilities of guardianship.
- (7) A guardian who exercises any of the powers referred to in subsection (6) shall do so in a manner consistent with the evolving capacity of the child.
- (8) Subsections (2) and (4) do not apply to decisions of a director under the *Child, Youth and Family Enhancement Act*.

Testamentary appointment of guardian

22(1) A guardian who is a parent of the child may by deed or will appoint a person to be guardian of the child after the death of that guardian.

(2) An appointment under subsection (1) does not take effect unless accepted by the person either expressly or impliedly by the person's conduct.

(3) Unless the guardian expressly states otherwise in the deed or will,

- (a) the guardianship takes effect immediately on the guardian's death, and
- (b) if more than one person is appointed as a guardian under subsection (1), any one of the persons may accept the appointment even if one or more of the other persons appointed decline to accept.

(4) A guardian may revoke an appointment under subsection (1).

(5) A person appointed as a guardian under subsection (1) has only the powers, responsibilities and entitlements of guardianship that the guardian had at the time of the guardian's death.

(6) If a guardian who is subject to a parenting order dies without appointing a guardian under subsection (1), a surviving guardian who is a parent of the child may, subject to any limitations imposed by the court, exercise the powers, responsibilities and entitlements of guardianship that had been allocated to the deceased guardian under that order.

Guardianship order

23(1) The court may, on application by a person who

- (a) is an adult and has had the care and control of a child for a period of more than 6 months, or
- (b) is a parent other than a guardian of a child,

make an order appointing the person as a guardian of the child.

(2) The court may, on application by a child, make an order appointing a person as a guardian of the child if

- (a) the child has no guardian, or
- (b) none of the child's guardians is able or willing to exercise the powers, responsibilities and entitlements of guardianship in respect of the child.

(3) The court on hearing an application for a guardianship order shall consider, and may require the applicant to provide the court with a report prepared by a qualified person respecting,

- (a) the suitability of the proposed guardian as a guardian,

- (b) the ability and willingness of the proposed guardian to exercise the powers, responsibilities and entitlements of guardianship in respect of the child, and
 - (c) whether it is in the best interests of the child that the applicant be appointed as a guardian of the child.
- (4) Subject to subsection (5), a person may not apply for a guardianship order unless the child or proposed guardian resides in Alberta.
- (5) If it is satisfied that there are good and sufficient reasons for doing so, the court may waive the requirement
- (a) that the child or proposed guardian reside in Alberta, or
 - (b) in the case of an application under subsection (1)(a), that the applicant has had the care and control of the child for a period of more than 6 months.
- (6) Subject to the regulations, the court may at any time on its own motion make a guardianship order appointing a guardian of a child, other than a director under the *Child, Youth and Family Enhancement Act*, to act jointly with another guardian of the child.
- (7) The court may, in making a guardianship order under this section or terminating the guardianship of a guardian under section 25, make a parenting order on its own motion or on application by one or more of the parties.
- (8) No order may be made under subsection (1) or (2) if the purpose of the application is to facilitate the adoption of the child.

Consent to guardianship

- 24(1)** A guardianship order shall not be made without the consent of
- (a) each guardian of the child,
 - (b) the child, if the child is 12 years of age or older, and
 - (c) the proposed guardian.
- (2) Despite subsection (1), the court may make an order dispensing with the consent of one or more of the persons referred to in subsection (1)(a) or (b) if the court is satisfied that there are good and sufficient reasons for doing so.

Termination of guardianship

- 25(1)** The court may, on application by a guardian or a proposed guardian, make an order terminating the guardianship of a guardian, including the applicant, if there is a guardian in place or about to be appointed and if
- (a) the court is satisfied that the guardian whose guardianship is to be terminated consents to the termination, or

- (b) for reasons that appear to it to be sufficient, the court considers it necessary or desirable to do so.
- (2) No order under subsection (1) relating to a child who is 12 years of age or older shall be made without the consent of the child.
- (3) Despite subsection (2), the court may make an order dispensing with the consent of the child if the court is satisfied that there are good and sufficient reasons for doing so.
- (4) If the court makes a guardianship order pursuant to an application by a child under section 23(2), the court may make a further order terminating the guardianship of any guardian if the court is satisfied that the guardian is unable or unwilling to exercise the powers, responsibilities and entitlements of guardianship in respect of the child.

Duration of guardianship

- 26 A person continues to be a guardian of a child until the earliest of
- (a) the guardian's death,
 - (b) the child's attaining the age of 18 years,
 - (c) the child's becoming a spouse or adult interdependent partner, and
 - (d) the termination of the guardian's guardianship under section 25.

27 to 29 Repealed

Review of guardian's decision

- 30(1) In this section, "significant decision" means a decision that
- (a) involves a serious risk to the health or safety of a child, or
 - (b) is likely to have serious long-term consequences for the child.
- (2) The court may, on application by a guardian or on its own motion, review a significant decision of a guardian, whether or not it has been implemented, and may
- (a) confirm, reverse or vary that decision, and
 - (b) provide advice and directions in respect of that decision.
- (3) This section does not apply to decisions of a director under the *Child, Youth and Family Enhancement Act*.

Referral of questions to court

31(1) A guardian appointed by the court or by will or deed may apply to the court for directions concerning a question affecting the child, and the court may make any order in that regard that the court considers appropriate.”