

The College of Physicians & Surgeons of Alberta (CPSA) provides advice to the profession to support physicians in implementing the CPSA Standards of Practice. This advice does not define a standard of practice, nor should it be interpreted as legal advice.

Advice to the Profession documents are dynamic and may be edited or updated for clarity at any time. Please refer back to these articles regularly to ensure you are aware of the most recent advice. Major changes will be communicated to our members; however, minor edits may only be noted within the documents.

## Contents

The law in Alberta.....	2
Consent in an emergency situation .....	2
Which adult can give consent for a child?.....	3
Adoptive parent.....	3
Step-parent.....	4
Divorce custodial parent (natural or adoptive) .....	4
Guardian by court order.....	5
Guardian by will .....	5
Guardian by agreement or temporary agreement.....	6
Foster parent.....	6
Other adult.....	6
Mature minor and patient confidentiality.....	7
Appendix A: Excerpt from the <i>Family Law Act</i> (Alberta).....	9
Part 1: Establishing parentage.....	9
Part 2: Guardianship, Parenting and Contact Orders and Enforcement of Time with a Child .....	20
Division 1: Guardianship .....	23
Referral of questions to court.....	32

This document addresses consent for minors, including mature minors. For adults (defined in legislation as individuals 18 years of age and older), refer to the advice document [Informed Consent for Adults](#).

## The law in Alberta

The Alberta [Family Law Act](#) was enacted on October 1, 2005, replacing the *Domestic Relations Act*. This legislation was substantially revised in 2010 to recognize changes in the makeup of Canadian families and the impact of the [Civil Marriage Act](#) (Canada), which created legal recognition for same sex marriages upon receiving Royal Assent on July 20, 2005.

The *Family Law Act* sets out who is considered a parent of a child, who can be declared a parent and who can be declared **not** a parent of a child; this includes children born to or adopted by heterosexual, homosexual and transgendered individuals.

Being a parent does not automatically mean the person is also a guardian of the child. The *Family Law Act* sets out when a parent is considered a guardian or may be declared by the Court to no longer be a guardian. A guardian has authority to give informed consent for a child.

Section 21 of the *Family Law Act* establishes the powers, responsibilities and entitlements of a guardian; in other words, what a guardian **must** do 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 the child. Section 18 of the *Act* identifies the multiple factors to be considered when determining the best interests of the child.

## Consent in an emergency situation

Notwithstanding any of the situations described below, if a regulated member is presented with a child needing emergency medical services, the law implies consent for treatment to the extent necessary to prevent death or further injury or disability to the child. Once the emergency situation has passed, the regulated member must consult the child's guardian for consent for further treatment.

## Which adult can give consent for a child?

The guardian of a child (or one of the guardians) can give or refuse consent for treatment. The guardian's decision must always be in the best interests of the child. If the guardian is not acting in the best interests of the child and the regulated member has reason to believe the child may be in need of intervention by a director of the child welfare authority, the regulated member has a duty to report the matter to the child welfare authority (see section 4 of the [Child, Youth and Family Enhancement Act](#)).

A regulated member can reasonably assume the parent of a minor child is the lawful guardian of the child. Only when circumstances suggest an adult accompanying a child may not be the child's guardian is the regulated member required to make further inquiries before providing any non-emergency treatment.

Determining guardianship can be a complicated process. A person is entitled to be a guardian of a child by:

- fulfilling the requirements of the *Family Law Act*;
- agreement;
- appointment in a will; or
- court order.

Ideally, a copy of any applicable agreement, will/grant of probate, or court order should be attached to the patient record. If a copy of the document is not readily available, the regulated member should make a detailed chart note regarding the circumstances establishing the guardianship rights of the adult who brought the minor child for treatment.

Relevant sections of the *Family Law Act* are included in [Appendix A](#).

## ADOPTIVE PARENT

An adoptive 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*). A guardian of a child being put up for adoption (e.g., the birth mother) can revoke consent to the adoption for a period of 10 days. The guardianship of the adoptive parent

thereafter becomes permanent, unless and until a court terminates the guardianship status. Accordingly, best practice is to obtain a copy of the adoption order and confirm with the adoptive parent the order is valid.

### **STEP-PARENT**

Unless a step-parent is an adoptive parent under the *Child, Youth and Family Enhancement Act*, a step-parent does not have guardianship over a minor step-child and is therefore not able to give or withhold consent for that child. Accordingly, a regulated member must have the informed consent of a natural parent who has guardianship before providing treatment to the child.

A step-parent may be a person “standing in the place of a parent” under Section 48 of the *Family Law Act*. However, this does not create guardianship. A specific court order declaring that person to be a guardian of the child is required.

### **DIVORCE CUSTODIAL PARENT (NATURAL OR ADOPTIVE)**

When parents divorce, the court can order, among other things, joint custody of the child(ren), or sole custody by one parent 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 the non-custodial parent’s guardianship rights are fully extinguished. There are several rights of guardianship which survive an order of sole custody. Under the *Divorce Act*, unless the court orders otherwise, the parent provided access 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 access always has the right to contest a decision of the custodial parent in court by showing the decision is contrary to the best interests of the child. However, Canadian courts have never adopted the view a sole custodial parent’s decisions are subject to the approval of a non-custodial parent.

Accordingly, if a custodial parent consents to treatment for a minor child which appears to be in the best interests of the child, the non-custodial parent cannot stop the treatment by advising the regulated member he or she does not consent to that treatment. Section 21(2)

of the *Family Law Act* requires guardians to share information and cooperate to ensure the best interests of the child are served; unfortunately, information-sharing and cooperation do not always occur.

When divorced parents are granted joint custody, each parent continues to have the full complement of guardianship rights as existed during the marriage, including the right to consent to treatment. The parent who has primary care of the child does not have authority to prevent or override the other parent's consent for treatment that is in the best interests of the child.

As a guiding principle, when treating a minor child of divorced parents, the regulated member should ask for a copy of the court order declaring parental rights upon divorce. If time constraints do not allow for review of the court order, the regulated member should document on the patient record the terms of the custody order as described by the parent who brought the child for treatment. A parent as guardian, before and after divorce, must always make decisions in the best interests of the child.

### **GUARDIAN BY COURT ORDER**

Guardian by court order includes adoptive parents, step-parents and guardians appointed for children after apprehension by a child welfare authority. In all of these situations, the regulated member is advised to review a copy of the court order granting guardianship. Again, if time constraints do not allow review of the court order, the regulated member should document on the patient record the terms of the court order as described by the person who brought the child for treatment.

### **GUARDIAN BY WILL**

Section 22 of the *Family Law Act* deals with a guardian appointed by a will. Although guardianship arises upon the death of the parent who made the will, there is the question of whether the will is valid. The validity of a will is addressed through probate, the process of proving to the court the will was validly made and should be followed.

A regulated member dealing with a guardian appointed by a will should request a copy of the will to confirm the authority of the adult to consent on behalf of the minor child. Ideally, the regulated member should also review a copy of the grant of probate to confirm the validity of the will.

### **GUARDIAN BY AGREEMENT OR TEMPORARY AGREEMENT**

Under Section 21(2)(d) of the *Family Law Act*, guardians may agree to allocate between themselves 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 his or her behalf in an emergency situation or where the guardian is temporarily absent due to illness or any other reason. However, the regulated member must be certain 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 regulated member should also confirm the reason the guardian is unavailable – an emergency, illness or other reason, as identified in section 21(6)(k) of the *Act*. Given the wording of this section, it is best to limit “other reason” to circumstances more extenuating than “the guardian is at work” or “is too busy” to attend the medical appointment; for example, the guardian is out of town. The regulated member should expect 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 best interests of the child.

### **FOSTER PARENT**

A foster parent gains guardianship of a child through a court order or agreement with a director of the child welfare authority. This type of agreement is governed by the *Child, Youth, and Family Enhancement Act*. The regulated member should obtain a copy of the court order or agreement to confirm guardianship and the authority of the foster parent to consent to treatment for the child.

### **OTHER ADULT**

This applies to an adult babysitter/nanny, a grandparent, neighbour or a girlfriend/boyfriend of the parent of a child. These adults have **no** guardianship over the child or authority to consent for the child except in the very limited situations outlined above. No guardianship rights arise even when a boyfriend/girlfriend is living with the parent and child, including when their involvement is considered an adult interdependent relationship.

When a non-guardian adult brings a child to a regulated member, the regulated member needs to determine if the child's guardian has provided consent (i.e., clear, written consent) or has appointed the adult accompanying the child to act on the guardian's behalf under section 21(6)(k) of the Family Law Act. In the latter situation, the regulated member should obtain a copy of the guardian's written appointment. If there is no written appointment, the regulated member should confirm the circumstances that apply and document this in the patient record.

### **MATURE MINOR AND PATIENT CONFIDENTIALITY**

In Alberta, a mature minor who is not a ward of a director under the *Child, Youth and Family Enhancement Act* is entitled to give or refuse consent for a proposed treatment, and a guardian has no authority to override or veto the mature minor's decision (mature minor doctrine).

Alberta has established no set age for a mature minor. The more serious the proposed treatment, the greater the level of maturity required before a child can be considered a mature minor. The courts generally recognize approximately 16 years as the threshold for maturity, and none have recognized any individual younger than 14 years. Child Welfare authorities in Alberta consider 12 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. These consultations are typically related to the disclosure of information or decisions about the custody of the child.

Patient confidentiality regarding mature minors does not simply follow the consent threshold. While the mature minor doctrine is commonly assumed to include a duty of confidentiality which would deny a guardian access to the mature minor's personal health information, the Courts have never declared this to be the case. 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 a mature minor can legally instruct a physician to keep information from his or her guardian.

Alberta law is comprised of common law (i.e., court decisions over the years) and statutory law. A statute will change the common law only when the language in the statute makes that intention clear. The mature minor doctrine is part of common law in Alberta, and does not appear to be altered by the *Family Law Act*.

Privacy legislation in Alberta confirms the duty of a regulated member to keep personal health information confidential, including that of a mature minor. Section 104 of the [Health Information Act](#) and section 61 of the [Personal Information Protection Act](#) both state a guardian cannot consent to disclosure of personal health information about a mature minor; the guardian can only consent to disclosure on behalf of a child who is not a mature minor.

However, even if a mature minor does not consent to the disclosure of their personal health information, section 35 of the *Health Information Act* and section 20 of the *Personal Information Protection Act* allow a regulated member to disclose to a third party (e.g., the guardian) in certain circumstances.

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 affecting the child within the powers and responsibilities set out in section 21(5). This includes nurturing the child toward independent adulthood and ensuring the child has the necessities of life, including medical care.

The prudent regulated member should err on the side of caution and uphold the duty of confidentiality to the mature minor. When a guardian is seeking information, the regulated member should ask the mature minor for consent to disclose to the guardian. The regulated member should document the mature minor's consent or refusal of consent on the patient record. A signed consent form would be best practice.

## Appendix A: Excerpt from the *Family Law Act* (Alberta)

### PART 1: ESTABLISHING PARENTAGE

#### Interpretation

5.1(1) In this Part,

- (a) “assisted reproduction” means a method of conceiving other than by sexual intercourse;
- (b) “embryo” means an embryo as defined in the Assisted Human Reproduction Act (Canada);
- (c) “human reproductive material” means human reproductive material as defined in the Assisted Human Reproduction Act (Canada);
- (d) “surrogate” means a person who gives birth to a child as a result of assisted reproduction if, at the time conception, she intended to relinquish that child to
  - (i) the person whose human reproductive material was used in the assisted reproduction or whose human reproductive material was used to create the embryo used in the assisted reproduction, or
  - (ii) the person referred to in subclause (i) and the person who is married to or in a conjugal relationship of interdependence of some permanence with that person.

(2) For the purposes of this Part, if a child is born as a result of assisted reproduction, the child’s conception is deemed to have occurred at the time the procedure that resulted in the implantation of the human reproductive material or embryo was performed.

2010 c16 s1(6)

#### Application of Part

6 This Part does not apply to an application under section 13 of the *Child, Youth and Family Enhancement Act*.

2003 cF 4.5 ss6,114;2003 c16 s117

### **Rules of Parentage**

7(1) For all purposes of the law of Alberta, a person is the child of his or her parents.

(2) The following persons are the parents of a child:

- (a) unless clause (b) or (c) applies, his or her birth mother and biological father;
- (b) if the child was born as a result of assisted reproduction, a person identified under section 8.1 to be a parent of the child;

(c) a person specified as a parent of the child in an adoption order made or recognized under the *Child, Youth and Family Enhancement Act*.

(3) The relationship of parent and child, and the kindred relationships flowing from that relationship, shall be determined in accordance with this Part.

(4) A person who donates human reproductive material or an embryo for use in assisted reproduction without the intention of using the material or embryo for his or her own reproductive use is not, by reason only of the donation, a parent of a child born as a result.

(5) A person who was married to or in a conjugal relationship of interdependence of some permanence with a surrogate at the time of the child's conception is not a parent of the child born as a result of the assisted reproduction.

(6) All distinctions between the status of a child born inside marriage and a child born outside marriage are abolished.

2003 cF 4.5 s7; 2010 c16 s1(7)

### **Presumption of Parentage — Biological Father**

8(1) For the purposes of section 7(2)(a), unless the contrary is proven on a balance of probabilities, a male person is presumed to be the biological father of a child and is recognized in law to be a parent of a child in any of the following circumstances:

- (a) he was married to the birth mother at the time of the child's birth;
- (b) he was married to the birth mother by a marriage that within 300 days before the birth of the child ended by
  - (i) death,
  - (ii) decree of nullity, or
  - (iii) judgment of divorce;

- (c) he married the birth mother after the child's birth and has acknowledged that he is the father;
- (d) he cohabited with the birth mother for at least 12 consecutive months during which time the child was born, and he has acknowledged that he is the father;
- (e) he cohabited with the birth mother for at least 12 consecutive months, and the period of cohabitation ended less than 300 days before the birth of the child;
- (f) he is registered as the parent of the child at the joint request of himself and the birth mother under the [Vital Statistics Act](#) or under similar legislation in a province or territory other than Alberta;
- (g) he has been found by a court of competent jurisdiction in Canada to be the father of the child for any purpose.

(2) Where circumstances exist that give rise to a presumption under subsection (1) that more than one male person might be the father of a child, no presumption as to parentage may be made.

(3) Subsection (1) does not apply in the case of a child born as a result of assisted reproduction.

2003 cF 4.5 s8;2010 c16 s1(8);2010 c16 s1(8)

### **Assisted Reproduction**

8.1(1) In this section and section 8.2,

- (a) a reference to the provision of human reproductive material by a person means the provision of the person's own human reproductive material to be used for his or her own reproductive purposes;
- (b) a reference to the provision of an embryo by a person means the provision of an embryo created using the person's own human reproductive material to be used for his or her own reproductive purposes.

(2) If a child is born as a result of assisted reproduction with the use of human reproductive material or an embryo provided by a male person only, the parents of the child are

- (a) unless clause (b) or (c) applies, the birth mother and the male person;

- (b) if the birth mother is a surrogate and, under section 8.2(6), she is declared not to be a parent and the male person is declared to be a parent, the male person and a person who
    - (i) was married to or in a conjugal relationship of interdependence of some permanence with the male person at the time of the child's conception, and
    - (ii) consented to be a parent of a child born as a result of assisted reproduction and did not withdraw that consent before the child's conception;
  - (c) unless section 8.2(9) applies, if the birth mother is a surrogate, but does not consent to the application under section 8.2, the birth mother only.
- (3) If a child is born as a result of assisted reproduction with the use of human reproductive material or an embryo provided by a female person only, the parents of the child are
- (a) unless clause (b) or (c) applies, the birth mother and a person who
    - (i) was married to or in a conjugal relationship of interdependence of some permanence with the birth mother at the time of the child's conception, and
    - (ii) consented to be a parent of a child born as a result of assisted reproduction and did not withdraw that consent before the child's conception;
  - (b) if the birth mother is a surrogate and, under section 8.2(6), she is declared not to be a parent and the female person is declared to be a parent, the female person and a person who
    - (i) was married to or in a conjugal relationship of interdependence of some permanence with the female person at the time of the child's conception, and
    - (ii) consented to be a parent of a child born as a result of assisted reproduction and did not withdraw that consent before the child's conception;

- (c) unless section 8.2(9) applies, if the birth mother is a surrogate, but does not consent to the application under section 8.2, the birth mother only.
- (4) If a child is born as a result of assisted reproduction with the use of human reproductive material or an embryo provided by both a male person and a female person, the parents of the child are
- (a) unless clause (b) or (c) applies, the birth mother and the male person;
  - (b) if the birth mother is a surrogate and, under section 8.2(6), she is declared not to be a parent, and the male person and female person are each declared to be a parent, the male person and the female person;
  - (c) unless section 8.2(9) applies, if the birth mother is a surrogate but does not consent to the application under section 8.2, the birth mother only.
- (5) If a child is born as a result of assisted reproduction without the use of human reproductive material or an embryo provided by a person referred to in subsection (1)(a) or (b), the parents of the child are the birth mother and a person who
- (a) was married to or in a conjugal relationship of interdependence of some permanence with the birth mother at the time of the child's conception, and
  - (b) consented to be a parent of a child born as a result of assisted reproduction and did not withdraw that consent before the child's conception.
- (6) Unless the contrary is proven, a person is presumed to have consented to be a parent of a child born as a result of assisted reproduction if the person was married to or in a conjugal relationship of interdependence of some permanence with,
- (a) in the case of a child born in the circumstances referred to in subsection (2), the male person referred to in that subsection,
  - (b) in the case of a child born in the circumstances referred to in subsection (3), the female person referred to in that subsection, or
  - (c) in the case of a child born in the circumstances referred to in subsection (5), the birth mother.

2010 c16 s1(9)

### **Surrogacy**

8.2(1) An application may be made to the court for a declaration that

- (a) a surrogate is not a parent of a child born to the surrogate as a result of assisted reproduction, and
- (b) a person whose human reproductive material or embryo was provided for use in the assisted reproduction is a parent of that child.

(2) Subject to subsection (3), the following persons may make an application under subsection (1):

- (a) the surrogate;
- (b) a person referred to in subsection (1)(b);
- (c) a person who was, at the time of the child's conception, married to or in a conjugal relationship of interdependence of some permanence with a person referred to in subsection (1)(b).

(3) If a child is born as a result of assisted reproduction with the use of human reproductive material or an embryo provided by both a male person referred to in subsection (1)(b) and a female person referred to in subsection (1)(b), only the surrogate, the male person or the female person may make an application under subsection (1).

(4) An application under subsection (1) may not be commenced more than 30 days after the date of the child's birth unless the court allows a longer period.

(5) Unless the court directs otherwise, the following persons must, in accordance with the regulations, be served with notice of the application:

- (a) if a surrogate brings an application under subsection (1),
  - (i) a person referred to in subsection (1)(b),
  - (ii) unless subsection (3) applies, a person who was, at the time of the child's conception, married to or in a conjugal relationship of interdependence of some permanence with a person referred to in subsection (1)(b), and

- (iii) any other person as the court considers appropriate;
  - (b) if a person referred to in subsection (1)(b) brings an application under subsection (1),
    - (i) the surrogate,
    - (ii) unless subsection (3) applies, a person who was, at the time of the child's conception, married to or in a conjugal relationship of interdependence of some permanence with a person referred to in subsection (1)(b),
    - (iii) if subsection (3) applies, the other person referred to in subsection (1)(b), and
    - (iv) any other person as the court considers appropriate;
  - (c) if a person who was, at the time of the child's conception, married to or in a conjugal relationship of interdependence of some permanence with a person referred to in subsection (1)(b) brings an application,
    - (i) the person referred to in subsection (1)(b),
    - (ii) the surrogate, and
    - (iv) any other person as the court considers appropriate.
- (6) The court shall make the declaration applied for if the court is satisfied that
  - (a) the child was born as a result of assisted reproduction with the use of human reproductive material or an embryo provided by a person referred to in subsection (1)(b), and
  - (b) the surrogate consents, in the form provided for by the regulations, to the application.
- (7) A person who is declared to be a parent of the child under subsection (6) and any person who, as a result of that declaration, is a parent of the child under section 8.1 are deemed to be the parents at and from the time of the birth of the child.
- (8) Any agreement under which a surrogate agrees to give birth to a child for the purpose of relinquishing that child to a person

- (a) is not enforceable,
- (b) may not be used as evidence of consent of the surrogate under subsection (6)(b), and
- (c) may be used as evidence of consent for the purposes of section 8.1(2)(b)(ii) or (3)(b)(ii).

(9) The court may waive the consent required under subsection (6)(b) if

- (a) the surrogate is deceased, or
- (b) the surrogate cannot be located after reasonable efforts have been made to locate her.

(10) If the court makes a declaration under subsection (6), the court shall identify in the declaration any person referred to in section 8.1(2)(b)(i) and (ii) or (3)(b)(i) and (ii), as the case may be, who is a parent as a result of that declaration.

(11) The court has jurisdiction under this section if the child is born in Alberta.

(12) An application may not be made under this section if

- (a) the child has been adopted, or
- (b) the declaration sought would result in the child having more than 2 parents.

2010 c16 s1(9)

### **Declaration Respecting Parentage**

9(1) If there is a dispute or any uncertainty as to whether a person is or is not a parent of a child under section 7(2)(a) or (b), the following persons may apply to the court for a declaration that the person is or is not the parent of a child:

- (a) a person claiming to be a parent of the child;
- (b) a person claiming not to be a parent of the child;
- (c) the child;
- (d) a parent of the child, if the child is under the age of 18 years;
- (e) a guardian of the child;
- (f) a person who has the care and control of the child.

- (2) This section does not apply where a child is born to a surrogate who has consented to an application under section 8.2.
- (3) If the court finds that a living person is or is not a parent of a child, the court may make a declaration to that effect.
- (4) If the court finds that a deceased person is or is not a parent of a child conceived before that person's death, the court may make a declaration to that effect.
- (5) In making a declaration under this section, the court shall give effect to any applicable presumption set out in section 8 and any applicable provision of section 8.1.
- (6) The court has jurisdiction under this section if
- (a) the child is born in Alberta, or
  - (b) an alleged parent resides in Alberta.
- (7) An application or declaration may not be made under this section if
- (a) the child has been adopted, or
  - (b) the declaration sought would result in the child having more than 2 parents.
- (8) When making a declaration of parentage, the court may, in order to facilitate registration under the *Vital Statistics Act*, order one or more of the following:
- (a) if the child is less than 12 years of age at the time the application is made, that the Registrar of Vital Statistics register or amend the name of the child in accordance with section 10 of the *Vital Statistics Act*;
  - (b) that the Registrar of Vital Statistics add the name of a parent to the child's birth registration document;
  - (c) that the Registrar of Vital Statistics amend the parentage shown on the child's birth registration document.
- (9) In making an order under subsection (8), the court shall consider the child's views and preferences.
- (10) A declaration of the court that a person is not a parent of a child does not affect

- (a) any rights and duties that have been exercised and observed, or
- (b) any interests in property that have been distributed before the declaration is made, unless the court orders otherwise.

2003 cF 4.5 s9;2007 cV 4.1 s82;2010 c16 s1(10),(52);

2013 c23 s6

### **New Evidence**

10(1) Where

- (a) a declaration of parentage has been made or an application for a declaration of parentage has been dismissed under section 9, and
- (b) evidence of a substantial nature becomes available that was not available at the previous hearing,

the court may, on application by a person referred to in section 9(1), confirm a declaration, set aside a declaration or make a new declaration of parentage.

(2) A person may not bring an application under this section without the permission of the court.

(3) Notice of an application under this section shall be given to the persons referred to in section 11.

(4) The setting aside of a declaration of parentage under subsection (1) does not affect

- (a) any rights and duties that have been exercised and observed, or
- (b) any interests in property that have been distributed as a result of the declaration before it is set aside, unless the court orders otherwise.

2003 cF 4.5 s10;2010 c16 s1(11);2014 c13 s27

### **Notice of Application**

11(1) Unless the court directs otherwise, the following persons must, in accordance with the regulations, be served with notice of an application for a declaration of parentage under section 9:

- (a) the person claimed to be the child, if the child is 16 years of age or older;
- (b) each guardian of the person claimed to be the child;
- (c) a person who has the care and control of the person claimed to be the child;
- (d) any person claiming or alleged to be a parent of whom the applicant has knowledge;
- (e) any other person, including a child under 16 years of age, as 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 have notice of the application.

2003 cF 4.5 s11; 2010 c16 s1(12)

12 and 13 Repealed 2010 c16 s1(13).

### **Evidence Not Admissible**

14 Evidence given in an application under this Part or Part 3 that tends to show that the person giving evidence had sexual intercourse with any person is not admissible against the person giving evidence in any other action under provincial law to which that person is a party.

### **Blood Tests, Etc.**

15(1) On the request of a party to an application under this Part or Part 3 or on its own motion, the court may make an order granting permission to obtain blood tests, DNA tests or any other tests that the court considers appropriate from any person named in the order and to submit the results in evidence.

(2) An order under subsection (1) may be made subject to any terms and conditions the court considers appropriate.

(3) No test shall be performed on a person without the person's consent.

(4) If a person named in an order under subsection (1) is not capable of giving consent because of age or incapacity, the consent may be given by the person's guardian.

(5) If a person named in an order under subsection (1) or the person's guardian, as the case may be, refuses to consent to a test referred to in the order, the court may draw

any inference it considers appropriate on behalf of the child without prejudice to the child in future proceedings.

2003 cF 4.5 s15;2014 c13 s27

## **PART 2: GUARDIANSHIP, PARENTING AND CONTACT ORDERS AND ENFORCEMENT OF TIME WITH A CHILD**

### **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.
- (d) repealed 2004 cM 18.1 s21.

2003 cF 4.5 s16;2004 cM 18.1 s21

### **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,
  - (i) each proposed guardian, and
  - (ii) a director under the *Child, Youth and Family Enhancement Act* if
    - (A) the child is in the custody or under the guardianship of a director, or

- (B) the child comes into the custody or under the guardianship of a director at any time after the application is commenced;
- (d) repealed 2004 cM 18.1 s21;
- (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.

2003 cF 4.5 ss17,114;2003 c16 s117;2004 cM 18.1 s21;

2010 c16 s1(15)

### **Best Interests of the Child**

18(1) In all proceedings under this Part except proceedings under section 20, 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 wellbeing,
  - (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 cooperate 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.

2003 cF 4.5 s18;2010 c16 s1(16)

## **DIVISION 1: GUARDIANSHIP**

### **Children subject to guardianship**

19(1) Every child is subject to guardianship.

(2) Subsection (1) does not apply to a child who has become a spouse or adult interdependent partner.

(3) A person who is or is appointed as a guardian of a child under this Part is a guardian for all purposes of the law of Alberta.

2003 cF 4.5 s19;2010 c16 s1(17)

### **Guardians of Child**

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

(2) Subject to this section, a parent of a child is a guardian of the child if the parent

- (a) has acknowledged that he or she is a parent of the child, and
- (b) has demonstrated an intention to assume the responsibility of a guardian in respect of the child within one year from either becoming aware of the pregnancy or becoming aware of the birth of the child, whichever is earlier.

- (3) For the purposes of this section, a parent has demonstrated an intention to assume the responsibility of a guardian in respect of a child by
- (a) being married to the other parent at the time of the birth of the child,
  - (b) being the adult interdependent partner of the other parent at the time of the birth of the child or becoming the adult interdependent partner of the other parent after the birth of the child,
  - (c) entering into an agreement that meets the requirements of the regulations with the other parent to be a guardian of the child,
  - (d) marrying the other parent after the birth of the child,
  - (e) cohabiting with the other parent for at least 12 consecutive months during which time the child was born,
  - (f) with respect to a female parent, carrying the pregnancy to term,
  - (g) with respect to a child born as a result of assisted reproduction, being a parent of the child under section 8.1,
  - (h) being married to the other parent by a marriage that, within 300 days before the birth of the child, ended by
    - (i) death,
    - (ii) a decree of nullity, or
    - (iii) a judgment of divorce,
  - (i) where the other parent is the birth mother of the child, voluntarily providing or offering to provide reasonable direct or indirect financial or other support, other than pursuant to a court order, for the birth mother during or after her pregnancy,
  - (j) voluntarily providing or offering to provide reasonable direct or indirect financial or other support, other than pursuant to a court order, for the child, or

- (k) any other circumstance that a court, on application under subsection (6), finds demonstrates the parent's intention to assume the responsibility of a guardian in respect of the child.

(4) Despite subsection (2), if the pregnancy resulting in the birth of the child was a result of a sexual assault, the parent committing that assault is not eligible to be a guardian of the child under this section.

(5) For the purposes of subsection (4), sexual assault may be found by a court under subsection (6) to have occurred whether or not a charge has been or could be laid, dismissed or withdrawn and whether or not a conviction has been or could be obtained.

(6) A court may, on application by a parent of a child, a guardian of a child or a child, or on its own motion in a proceeding under this *Act* or the *Child, Youth and Family Enhancement Act*, make a determination that a parent meets or does not meet the requirements to be a guardian under subsection (2).

(7) In making a determination under subsection (6), the court may identify the powers, responsibilities and entitlements of the guardian, but the court may not vary those things without an application under section 32.

(8) In an application under this section, the court may, for the purposes of this section only, make a finding that a person is a parent, and in doing so, the court shall have regard to Part 1.

(9) Despite anything to the contrary in this section, a person who is a guardian of a child immediately before the coming into force of this subsection does not cease to be a guardian by reason of this section.

2003 cF 4.5 s20;2005 c10 s6;2010 c16 s1(18)

### **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*.

2003 cF 4.5 s21;2005 c10 s7

### **Testamentary Appointment of Guardian**

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

- (a) a will, or
- (b) a written document that is signed and dated by the guardian and an attesting witness.

(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 will or document referred to in subsection (1),

- (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.

2003 cF 4.5 s22;2010 c16 s1(19)

### **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, whether it is in the best interests of the child that the applicant be appointed as a guardian of the child, including whether the proposed guardian

- (a) is suitable as a guardian, and
- (b) has the ability and is willing to exercise the powers, responsibilities and entitlements of guardianship in respect 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 with another guardian of the child in accordance with section 21(2).

(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.

(9) For greater certainty, one or more persons may be appointed guardians of a child under this section despite the fact that one or both parents of the child are guardians pursuant to section 20.

2003 cF 4.5 ss23,114;2003 c16 s117;2005 c10 s8;2010 c16 s1(20)

### **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 2004 cM 18.1 s21.

### **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*.

2003 cF 4.5 ss30,114;2003 c16 s117

### **REFERRAL OF QUESTIONS TO COURT**

31(1) A guardian appointed by the court or by will or a document referred to in section 22(1) 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.