

GUARDIANSHIP

Relevant Sections: [37](#), [50-57](#)

WHAT THE FAMILY LAW ACT SAYS:

The *Family Law Act* (FLA) uses the term “guardian” to describe a person who is responsible for the care of a child. Under the Act, only a guardian has parental responsibilities and parenting time (for more information see **Backgrounder: Parenting Arrangements**). Parents who have lived with or regularly cared for their child are the child’s guardians, including if the parents separate and no longer live with each other. A parent who has never lived with or regularly cared for their child may become a guardian by agreement with the child’s other guardian(s). Someone who is not the child’s parent may also become a guardian by applying for a court order appointing them as a guardian. The person will need to show it is in the child’s best interests for them to be a guardian, and the court requires a criminal record check, a protection order registry check and a child protection records check. The Act requires that if the child is 12 years or older, they need to give written approval. In addition to making guardianship orders, the court can also terminate a person’s guardianship if that is in the child’s best interests, however this does not happen often.

If a parent/guardian has a serious illness that may cause death or expects to become mentally incapable and therefore unable to care for a child, they can appoint a “stand-by guardian” using a specific form. They must describe on the form when the stand-by guardianship will start. The stand-by guardian will continue as the child’s guardian after the person who appointed them has died. The FLA also allows a guardian to use a will or specific form to appoint another person to be a child’s guardian when the parent/guardian dies.

INDIGENOUS PERSPECTIVES:

- How do Indigenous (First Nations, Inuit, and Métis) families decide who will care for and make decisions about a child when the child’s parents may be unable to do so, or may need extra help caring for the child for a period of time?
- Do Indigenous communities have any role in deciding how a child will be cared for, or a role in supporting arrangements for the care of a child?
- How are plans made to care for a child if a parent/guardian becomes ill or dies?
- How would your family or Indigenous community resolve a dispute between parents, grandparents, or other family and friends about who should take care of a child and make decisions about the child?
- Are there specific considerations with regard to decisions about the care of an Indigenous child that should be included in the FLA?

SOME ISSUES WE KNOW ABOUT:

A non-parent (for example, a grandparent or family friend) can only become a child’s guardian through a court order, even if the child’s parents/guardians agree it is in the child’s best interests for them to become a guardian. In this way, the Act means to protect the child’s safety and well-being, however some people feel a child’s parents/guardians should be able to make this decision without going to court if they agree.

A parent who has never lived with or regularly cared for their child is not automatically the child’s guardian and does not have responsibility for making decisions about the child. If they wish to become a guardian, they need to reach an agreement with the child’s other parents/guardians or apply for a court order. Some people agree with this, but others feel a child’s parent should always be their guardian.

Sometimes families need someone who is able to care for and make some decisions about a child for a temporary period of time. The FLA does have a provision that allows parents/guardians to authorize another person to take over some of their parental responsibilities for a child for a temporary period of time, but many people don’t know about this process, and it may not be recognized by schools or health care providers who require proof of guardianship.

A person who has responsibility for a child under the [Adoption Act](#) or under certain sections of the [Child, Family and Community Service Act](#) (CFCSA) is recognized as a guardian under the FLA. As the CFCSA is amended to respect the inherent rights of Indigenous communities to provide their own child and family services, the FLA needs to also recognize people given guardianship responsibilities by an Indigenous community.