Form 5 | Guidebook

GUIDEBOOK |
Preparing a Guardianship Affidavit

PROVINCIAL COURT FAMILY RULES

12 August 2024

This guidebook will provide you with legal information and tips for completing the Guardianship Affidavit Form 5. It provides information in addition to what's in the form instructions and content.

It contains helpful information and links to other resources and information. We recommend using the online version available at www.gov.bc.ca/court-forms or scan the QR code to access it.

If you prefer to have a physical copy of this guidebook, you can print it out. You may choose to print only specific pages. The printed guidebook is 13 pages total.

Tips for completing court forms

A court form is a tool for you to communicate your information to the court and the other party. The forms help you provide the information the court will need to make an informed decision.

1. **Take your time to read each question and instruction.** Don't rush. Make sure you understand what is asked before answering.
2. **Write your answers in clear and simple language.** You don't need to use special wording or legal terms.
3. **Stick to the facts. Present them in a logical order.** Avoid unnecessary details or explanations unrelated to your case.
4. **Provide complete answers to each question.** If a question has multiple parts, answer each part.
5. **Be accurate.** Especially names and dates. You should follow the date format in the instructions, usually dd/mmm/yyyy, for example 12/MAY/2024.
6. **Ask for help.** If you're unsure how to answer a question or fill out a section, ask for help.
7. **Review the form before filing.** Once you've completed the form, review it to make sure you haven't missed anything or made any errors. It's a good idea to ask a trusted friend, family member, or other person to review it. They may catch any mistakes you missed.

Help navigating the court forms

If you're unsure about how to answer a question or fill out a section of the form, ask for help.

- Court registry, Justice Access Centre or Family Justice Centre staff can help answer questions about the forms. They can't help filling out your forms or give advice about legal problems.
- Justice Access Centres and Family Justice Centre staff can support you in navigating and completing court forms. For more information about their services, including how to reach them, visit www.gov.bc.ca/family-justice-services-division.
- Only lawyers can fill out a court form for you, tell you what to write, or give you advice about legal problems. If you need help filling in the forms and do not have a lawyer, ask court registry staff, Justice Access Centre or Family Justice Centre staff to refer you to someone who can help. There are some lawyers who might be able to help you for free.

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This guidebook provides general information only and is not provided as legal advice. If you have a legal issue, you should contact a lawyer for legal advice about your own situation. Registry staff, staff at a Justice Access Centre or Family Justice Centre, and the Provincial Court cannot provide legal advice.

1| Understanding the law

A guardianship affidavit is used to present evidence to the court in support of an application about guardianship of a child under section 51 of the Family Law Act, including an application for a consent order for guardianship.

NOTE: If there is more than one person applying to be appointed a guardian, each person must complete and file their own guardianship affidavit.

It is a written document that contains facts that you must swear under oath (usually on a Bible or other religious book) or affirm (non-religious promise) to be true. After you swear or affirm the affidavit, it is evidence of the facts and events it sets out, just as if you took the stand in a courtroom to provide those facts.

The Guardianship Affidavit Form 5 must be filed and served on each other party at least 7 days before the date set for the hearing of the application if no trial preparation conference is scheduled, or at least 7 days before the date of the trial preparation conference if one is.

The affidavit must be sworn or affirmed no more than 7 days before it is filed.

2| Getting started

Record checks

Before you can complete the guardianship affidavit, you must complete the following background record checks referenced in the form:

- a Ministry of Children and Family Development record check;
- a protection order record check from the Protection Order Registry; and
- a criminal record check

The court can make an **interim order for guardianship** without the completed affidavit and record checks. The interim order will last up to 90 days. During this time, you must:

- get your background record checks done, and
- fill out and file the guardianship affidavit.

TIP: The background record checks must be dated within 60 days of the date that the record check is filed with the guardianship affidavit. They will be attached to your guardianship affidavit as exhibits.

How do I get the background record checks?

- **Ministry of Children and Family Development record check**

  You must fill out a Section 51 – Consent for Child Protection Record Check form and give it to the court registry where you have filed your application about guardianship of a child. You are usually required to file this with your application.

  The registry will let you know when the results from the record check come in. The registry will then give you copies to attach to your affidavit.

  It may take some time to get the results back. You can check in with the registry to find out when the results might be expected.

- **Protection order record check from the Protection Order Registry**

  You must fill out a Request for Protection Order Registry Search form and give it to the court registry where you have filed your application about guardianship of a child. You are usually required to file this with your application.

  The registry will let you know when the results from the record check come in. The registry will then give you copies to attach to your affidavit.

  It may take some time to get the results back. You can check in with the registry to find out when the results might be expected.

- **Criminal record check**

  To get a criminal record check, ask at the front desk of the police station or RCMP detachment in your community. There is a fee you will need to pay to get the criminal record check.

  The police or RCMP will send you your results.

To complete the form, you might also need:

- birth dates, names, and other related information about the child or children
- copies of any court orders you already have
- information about any criminal offences and/or charges

3| Filling out the Guardianship Affidavit Form 5

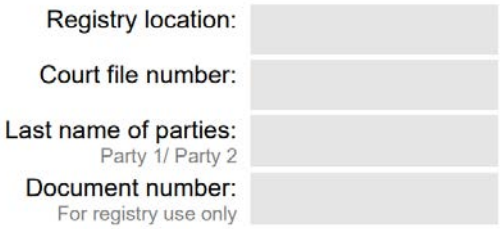
Here you'll find information to help you complete the form. Each section corresponds to a different part of the form. It includes information and tips to help you navigate the form and court process with confidence.

Registry location, court file number, and last names of the parties

These fields are used to help match your guardianship affidavit to the correct court file.

Copy the registry location and court file number from the top right corner of any filed document.

If you are filing this with a document that will start a court file, the court registry will assign a court file number at the time of filing.



Information about the person completing the guardianship affidavit

The form is an affidavit. It is written evidence of the facts set out in it that you must swear under oath (usually on a Bible or other religious book) or affirm (non-religious promise) to be true.

An affidavit must be in the first person (from the writer's point of view, using "I") and include the name, occupation and address of the person who is making the affidavit.

Everything in your affidavit must be true to the best of your knowledge.

TIP: The address does not have to be the address where you live but should be clear if that is the case. You can use your address for service. If you do not live at the address for service, you can add 'care of' or 'c/o' to show it is not your personal address.

About the children

This section of the form collects information about each child you are applying to become a guardian of, including information about the child and your relationship with them.

Who is a child's guardian?

A parent is a child's guardian if:

- they lived with the other parent when the child was born,
- they care for the child regularly, but have never lived with the child, or
- in an assisted reproduction situation, they are named as a parent in a pre-conception agreement, and
- there is no agreement or order that says they are not a guardian.

After separation, each parent remains a guardian of the child, unless the parents make an agreement or the court orders that one parent is not a guardian of the child.

A stepparent is not a guardian unless the court has appointed them a guardian of the child. A person who isn't a parent can become a guardian only by court order or under a will.

Include only people you know are currently a guardian of the child.

When is a parent NOT a guardian?

A parent is not a guardian of a child if they have never lived with the child unless:

- the parent regularly cares for their child, or
- there is an agreement or order that says they are a guardian.

Caring for the child

A guardian is responsible for their child's care and upbringing. A guardian spends time with and cares for a child and is responsible for making decisions that affect them.

A guardian must exercise parental responsibilities in the best interests of the child [s. 43 Family Law Act]. Go to section 41 of the Family Law Act for a list of the parental responsibilities with respect to a child which a guardian may exercise in their care for the child.

Set out the detailed plans for how the child is to be cared for by you. Describe your plans in your own words.

Incidents of family violence

Family violence includes physical, sexual, and psychological or emotional abuse of a family member. Psychological or emotional abuse includes intimidation, harassment, coercion or threats, financial abuse, stalking, and intentional damage to property.

In the case of a child, family violence includes witnessing or being exposed to family violence. Family violence can occur with or without an intent to harm a family member.

Go to section 1 of the Family Law Act for a full definition of family violence.

If you are aware of any incidents of family violence, whether the violence is directed toward the child or another family member, describe it on the form.

To determine what is in the best interests of a child, you and the court must consider:

- the impact of any family violence on the child's safety, security or well-being
- whether the actions of a person responsible for family violence indicate that the person may be impaired in the person's ability to care for the child and meet the child's needs

Go to the following sections of the Family Law Act for more information about the best interest of a child and assessing family violence:

- section 37 *[best interest of child]*
- section 38 *[assessing family violence]*

Victim Services

Anyone who has been a victim of crime, including family and sexual violence, in British Columbia, their family members, and witnesses can use victim services.

VictimLinkBC is a confidential, multilingual support program for victims of crime and trauma, available 24 hours a day, 7 days a week.

Victim service workers can provide crisis support, information and referrals to supports including safety planning, victim services, transition houses and counselling services.

Call or text: 1-800-563-0808 | Email: 211-VICTIMLINKBC@UWBC.CA

Other children

You may have another child that is not the subject of your application about guardianship. If you do, the court needs some basic information about them too.

Involvement in court proceedings

Have you been involved in court proceedings about <u>any</u> child in your care?

Court proceedings may be in Provincial Court or Supreme Court.

There are different types of proceedings, including:

- family law proceedings under the Family Law Act or Family Relations Act
- divorce and family law proceedings under the Federal Divorce Act
- child protection proceedings under the Child, Family and Community Service Act

You may also have been involved in court proceedings under comparable legislation about a child in another jurisdiction outside British Columbia.

If you have been involved in any court proceedings about any child in your care, you must provide details about it in the guardianship affidavit. If the proceedings were about separation or divorce that did not involve a child under your care, you do not need to include it.

Include any family proceeding (including divorce) where there were children of the marriage, even if the children weren't the subject of anything in dispute.

The Divorce Act defines a child of the marriage as:

- a child under the age of majority who hasn't withdrawn from a parent's charge, or
- a child who's over the age of majority (19 years in B.C.) but unable to withdraw from a parent's charge because of illness, disability, or other cause.

TIP: To complete this section of the affidavit, you'll need information about each court proceeding, including a copy of any court order concerning a child in your care under the court proceeding. You may have more than one court order concerning a child for a court proceeding. All orders must be attached.

Each court order concerning a child in your care must be attached to your affidavit as an exhibit. Exhibits are documents that you attach to your affidavit, usually to support a fact. If you do not have a copy of a court order, contact the court registry where the order was made to find out how to get a copy.

How do I attach an exhibit?

When you attach an exhibit, you must introduce it in your affidavit. To introduce it, you must explain what the document is, reference the document, and say that you

are attaching it as an exhibit. Follow the template in the form to enter this information.

Each exhibit is identified with a letter, Exhibit "A", "B", "C" and so on.

All exhibits must be attached at the end of the affidavit.

When you bring your affidavit to be sworn or affirmed, you must also bring all your exhibits. Each exhibit will be marked by the commissioner for taking affidavits using a certificate (usually a stamp) with wording like this: "This is Exhibit [A, B, C…] referred to in the affidavit of [name] sworn (or affirmed) before me on [date] at [location]" and is signed by the commissioner for taking affidavits.

Record checks

A background check is a common way to gather more information about a person's past involvement in child protection, family law, or criminal proceedings.

You must provide the results of your record checks as exhibits with your guardianship affidavit.

Collect the results of your 3 record checks:

- British Columbia Ministry of Children and Family Development Records Check
- Protection Order Registry Protection Order Records Check
- Criminal Records Check

⚠ **The results of the records checks must be dated within 60 days <u>before</u> the date that the guardianship affidavit is filed.**

Record the date of each record check on the form and give them each an exhibit letter. Use the next letter in the alphabet following the orders you attached in Question 8. If you had no court orders to attach, start this section with Exhibit A.

Criminal offences

Criminal records do not always include all criminal convictions and they don't include criminal offences that you are currently charged with.

If you have been convicted, and not received a pardon or record suspension, of any criminal offences other than those identified in your criminal records check, you must report them in the guardianship affidavit.

You have been convicted if you stated to the court that you are guilty (called pleading guilty) or you have been found guilty by the court (a judge or jury).

Try to include:

- the date of offence,
- where the offence took place,
- a description of the charge, accusation, or offence type, and
- the results or disposition (sentence or outcome)

If you are currently charged with a criminal offence, you must also report it in the guardianship affidavit. Include the details in the table provided.

Under "Nature of alleged offence", you can briefly describe the crime you have been accused of committing. Crown counsel decides what offences you are charged with. You can refer to the Information in your criminal file to find the details.

Swearing or affirming the guardianship affidavit

The affidavit is used as evidence by the court when they are deciding what order to make about guardianship of a child. It must be signed only with a commissioner for taking affidavits.

> ⚠ **Do not sign the affidavit until you are with a commissioner for taking affidavits and they tell you to sign it.**
>
> **Make sure that you bring any documents you are attaching to your affidavit as exhibits with you. The commissioner will also need to date and sign the exhibits.**

Go to the next section of this guidebook on Swearing or affirming your guardianship affidavit for more information on how meet with a commissioner for taking affidavits.

4| Swearing or affirming your guardianship affidavit

The guardianship affidavit contains facts that you must swear under oath (usually on a Bible or other religious book) or affirm (non-religious promise) to be true with a commissioner for taking affidavits.

> ⚠ **You can't make any changes to your guardianship affidavit once it has been sworn or affirmed, so make sure you've reviewed it before you do.**

How do I swear or affirm my guardianship affidavit?

To swear or affirm the guardianship affidavit, you must meet with a commissioner for taking affidavits. Lawyers, notary publics and many court registry staff are commissioners for taking affidavits.

It is free to have your affidavit sworn or affirmed with the court registry staff. You can go in person to any Provincial Court Registry. If you have the document sworn or affirmed at a different court registry, you will still need to file it at the court registry where the existing case is filed.

The commissioner will check your photo ID to make sure you are who you say you are, ask you if you understand the contents of your affidavit, then ask you to swear or affirm that the contents are true. The commissioner will then watch you sign the document before signing it themselves.

What if I can't meet with a commissioner for taking affidavits?

Rule 172 allows you to file an unsworn affidavit if you can't meet with a lawyer, notary or someone at the courthouse to swear or affirm it before you file it. To file an unsworn affidavit, the person who made the document must sign it and must be available to swear or affirm that the contents of the affidavit are true at a future court appearance. The court usually will not consider it as evidence until this has been done.

TIP: Remember to bring the guardianship affidavit form and all your exhibits with you.

5| Filing the guardianship affidavit

You must file the guardianship affidavit at the court registry where the case is located. It can be filed:

- electronically online using the Family Law Act Online Forms Service
- in person at the court registry
- by mail
- by email, as referenced in Notice to the Profession and Public NP 28 Current Court Operations, or
- by fax filing using the Fax Filing Cover Page Form 52

For courthouse locations, addresses, and contact information visit: www.gov.bc.ca/courthouse-locations

There are no fees for filing Provincial Court family documents.

You must file:

- ❑ the completed guardianship affidavit form
- ❑ a copy of each court order about a child, if applicable
- ❑ a copy of your British Columbia Ministry of Children and Family Development records check
- ❑ a copy of your Protection Order Registry protection order records check
- ❑ a copy of your criminal records check

TIP: If you are filing in person, you must make extra copies of the guardianship affidavit and attachments for filing. Copy the affidavit and exhibits AFTER it has been sworn or affirmed by a commissioner for taking affidavits. One set for you, one set for the court, and one set for each other party. Be sure to bring all copies of the documents to the registry.

The registry clerk will review your form to make sure it's complete before filing it. **A document is filed once the court registry applies a court stamp to it.**

You'll be given a copy for your records along with a copy for the other party.

6| Serving the guardianship affidavit

It is important that each other party is aware of what step is being taken in the case. Service is the act of giving or leaving documents with the required person.

There are two types of service – personal service and ordinary service.

You must serve each other party with a copy of the filed guardianship affidavit.

TIP: If you are serving the guardianship affidavit with other court documents, check how the other document needs to be served. It makes sense to serve all the documents together, but the other document may have to be served by personal service.

The guardianship affidavit can be served by **ordinary service to the address of service** for each party.

Ordinary service means that a party must be served to their address for service in one of the following ways:

- by leaving the documents at the party's address for service
- by mailing the documents by ordinary mail to the party's address for service
- by mailing the documents by registered mail to the party's address for service
- if the party's address for service includes an email address, by emailing the documents to that email address
- if the party's address for service includes a fax number, by faxing the documents to that fax number

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TIP: Remember to take note of any deadline you might have for service. It might make a difference which method of service you choose and when you need to serve the document.

Rule 179 sets out when a document is considered to have been served depending on which method of service is used. For example, a document served after 4:00pm is actually considered to have been served the next day. A document served by ordinary mail is considered served 14 days after it is mailed. Check first!

Personal service means an adult person who is at least 19, **other than you**, must hand-deliver the documents **directly to the person** being served. A party cannot personally serve a document on the other party.

Some documents must be personally served, like the Application About a Family Law Matter and the Application About a Protection Order.

A party's **address for service** is the address they have provided to the court. A party who does not have an address for service must be served by personal service.

The rules about service are found in Part 12 Division 4 of the Provincial Court Family Rules.

Proof of service

The court may need proof you had the guardianship affidavit served. The person serving the documents must complete a Certificate of Service Form 7 so that you can prove service of the documents. You must attach a copy of the documents to the Certificate of Service. Remember to make a copy before the documents are served.