Preparing a Guardianship Affidavit

Form 5
Provincial Court Family Rules

Complete this form if you are making an application for an order about guardianship of a child under section 51 [*orders respecting guardianship*] of the *Family Law Act*, including an application for a consent order for guardianship.

Before you can complete the affidavit, you must complete the following background 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

To get a criminal record check, ask at the police station or RCMP detachment in your community.

To get the Ministry of Children and Family Development and Protection Order Registry record checks, you must fill out:

- a Section 51 - Consent for Child Protection Record Check, and
- a Request for Protection Order Registry Search.

Give them to the court registry where you will be filing your application. These documents must be filed with an Application About a Family Law Matter Form 3 that includes an application for an order about being appointed as a guardian or with your counter application to be appointed as a guardian. The registry will let you know when the results from the record checks come in. The registry will then give you copies to attach to your affidavit. The record checks must be dated within 60 days before the date that the record check is filed.

The court can make an interim order for guardianship of a child without the completed affidavit and record checks. The interim order will last up to 90 days. During this time, you must get the background checks and fill out and file the affidavit.

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.

Legal Assistance

Understanding the law and making sure you get correct information is important. If you get the wrong information or do not know how the law applies to your situation, it can be harder to resolve your case. Getting advice from a lawyer can help.

Lawyers – To find a lawyer or to have a free consultation with a lawyer for up to 30 minutes, contact the Lawyer Referral Service at 1-800-663-1919.

Legal Aid, Duty Counsel and Family Advice Lawyers – To find out if you qualify for free legal advice or representation, contact Legal Aid BC at 1-866-577-2525

Legal Services and Resources – Visit Clicklaw at www.clicklaw.bc.ca/helpmap to find other free and low-cost legal services in your community

What you need to get started

Try to collect as much information as possible before you start to complete the form.

You will need:

- birth dates, names, and other related information about the child or children
- copies of any court orders you already have
- Ministry of Child and Family Development records check
- Protection Order Registry protection order records check
- criminal records check
- information about any criminal offences and/or charges

Step 1: Complete the Guardianship Affidavit form ☐

This form is available online at www.gov.bc.ca/court-forms or at any Provincial Court Registry.

You can complete the form online and print it for filing. You can also complete it by hand. If you complete it by hand, be sure it's readable. Registry staff and staff at any Justice Access Centre or Family Justice Centre can help answer questions about the forms, but they cannot help complete your forms or give advice about legal problems. If you need help filling in the forms and do not have a lawyer, ask the court registry staff or staff at the Justice Access Centre or Family Justice Centre to refer you to someone who can help.

You need to complete and file the main part of the form and only the schedules that apply to your application.

Follow the instructions in the form. You will be given space to provide information that is important to support your application.

To prepare the form for filing:

- print or make copies of all documents: one set for you, one set for the Court, and one set for each other party
- staple each package of documents together
- bring all copies to the court registry for filing **or** send by mail or by fax filing using the Fax Filing Cover Page Form 52

Step 2: Get the affidavit sworn/affirmed and signed with a commissioner for taking affidavits ☐

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

The affidavit must be signed with commissioner for taking affidavits. They will need to see a piece of your photo ID and they will ask you to promise that the information in the application affidavit is true.

Lawyers and notaries are all commissioners for taking affidavits. The court registry also has staff who are commissioners for taking affidavits who can swear or affirm your affidavit for free.

If you cannot get the document sworn or affirmed before the document is filed, the unsworn document can be filed if you will be available to swear or affirm that the contents of the document are true during your court appearance.

Step 3: File the Guardianship Affidavit form at the Provincial Court Registry ☐

You must file at the Provincial Court Registry where the existing Provincial Court case is filed.

The registry clerk will review your package to make sure it is complete before filing it. You will be given a copy for your records.

There are no fees for filing Provincial Court family documents.

Step 4: Serve a copy of the affidavit on each other party ☐

Service is the act of giving or leaving documents with the required person. It is important that each other party know that a case is going on, are aware of what step is being taken, and are given a chance to tell their side of the story to the court.

The Guardianship Affidavit must be served to the address of service of each other party in any 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 document(s) to that email address
- if the party's address for service includes a fax number, by faxing the documents to that fax number

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 leaving a copy of the application document(s) directly with the person (this is called personal service).

Personal service requires that an adult (at least 19 years old) who is not a party hand deliver the documents to the party to be served.

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

Tips for Completing the Form:

Registry location and court file number –
Copy this information from the top right corner of the Notice to Resolve a Family Law Matter or other document filed with the court.

Information about the person completing the affidavit –

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 swearing or affirming the affidavit. Provide this information in the field provided on the form.

If you are a party to the case, you can include 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. The address does not have to be the address where you live but should be clear if that is the case. For example, if you are a child's teacher making the affidavit, you may choose to use the school address instead of your home address.

Information abut the child(ren) –
Include each child you are asking to become a guardian of and provide the details required by the table including:

- the child's full name - usually their name from their birth certificate, unless they have had a legal name change
- the child's date of birth
- the name(s) of the child's current guardian(s)
  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.

  A parent can become a guardian of a child through a court order or by an agreement with all the other guardians of the child. A non-parent can become a guardian through a court order.
- the name(s) of the child's parent(s) who are not current guardian(s)

Your date of birth –
Provide your date of birth in the field provided.

Relationship with the child(ren) –
Provide the details required by the table. Use whatever wording best describes your relationship to the child and to describe the length of your relationship with the child.

Caring for the child(ren) –
Describe in your own words how the child(ren) are to be cared for by you. You do not need to use any special wording. The key is to be clear about how they will be cared for.

Guardianship Affidavit

Form 5
Provincial Court Family Rules
Rules 26, 51 and 172

Registry Location:
Court File Number:

I, _____ , _____ ,
(full name) (occupation)
of _____ .
(address of party, city, province)

SWEAR OR AFFIRM THAT:

I know or believe the following facts to be true. If these facts are based on information from others, I believe that information to be true.

1. I am making this affidavit in support of an application under the *Family Law Act* to become a guardian of the following child(ren):

Child's full name	**Child's date of birth** (mmm/dd/yyyy)	**Name(s) of child's current guardian(s)**	**Name(s) of child's parent(s) who are not current guardian(s)**

2. My date of birth is _____ .
(mmm/dd/yyyy)

3. The nature and length of my relationship with the child(ren) referred to in paragraph 1 of this affidavit is as follows:

Child's full name	**Nature of relationship to child** (Specify whether parent, step-parent, grandparent, aunt, uncle, family friend, etc.)	**Length of relationship**

4. The current living arrangements of the child(ren) referred to in paragraph 1 of this affidavit are as follows:

Child's full name	**Current living arrangements**

5. I plan to care for the child(ren) referred to in paragraph 1 of this affidavit as follows:
Set out detailed plans for how the child(ren) is/are to be cared for.

Family violence –

Family violence includes physical, sexual, and psychological or emotional abuse of a family member.
Psychological or emotional abuse includes intimidation, harassment, coercion, threats, financial abuse, stalking, and intentional damage to property.
In the case of a child, it includes witnessing or being exposed to family violence.
Family violence does not include self-defense.

Select the option on the form that applies to your situation. If you are aware of incidents of family violence that affect a child, describe the incidents in the field provided in your own words. You do not need to use any special wording. The key is to be clear.

Other child(ren) –

Are you the parent, step-parent or guardian of another child? Select the option on the form that applies to your situation.

If yes, provide the details required in the table about your other children.

Court proceedings about child(ren) in your care –

Have you been involved in any court proceedings about a child in your care?

Court proceedings may be in Provincial Court or Supreme Court. There are different types of proceedings, including divorce and family law proceedings under the *Divorce Act*, *Family Law Act* or *Family Relations Act*, or child protection under the *Child, Family and Community Service Act*. You may also have been involved in court proceedings about a child in another jurisdiction outside British Columbia.

Please provide the details required in the table for any court proceeding you have been involved in concerning children under your care.

You must also attach a copy of any orders made. To attach a copy to the affidavit, you must introduce the order 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 (The order dated [*mmm/dd/yyyy*] referred to in item [*1, 2, 3…*] above is attached as Exhibit [*A, B, C, …*]). Each exhibit is identified with a letter, Exhibit "A", "B", "C" and so on.

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.

6. *Select whichever option is correct.*

☐ **I am not aware** of any incidents of family violence, as that term is defined in section 1 of the *Family Law Act*, that affect the child(ren) referred to in paragraph 1 of this affidavit.

☐ **I am aware** of the following incidents of family violence, as that term is defined in section 1 of the *Family Law Act*, that affect the child(ren) referred to in paragraph 1 of this affidavit:
Describe the incidents of family violence of which you are aware

7. *Select whichever option is correct.*

☐ **I am not** a parent, step-parent or guardian of any children except that child/those children referred to in paragraph 1 of this affidavit.

☐ **I am** the parent, step-parent or guardian of the following child(ren) who is/are not referred to in paragraph 1 of this affidavit.

Child's full name	**Child's date of birth** (mmm/dd/yyyy)	**Nature of relationship to child** (Specify whether parent, step-parent or guardian)

8. *Select whichever option is correct.*

☐ **I have not been** involved in court proceedings in British Columbia under the *Child, Family and Community Service Act*, the *Family Relations Act*, the *Family Law Act*, or the *Divorce Act* (Canada), or in any court proceedings under comparable legislation in any other jurisdiction, concerning children under my care.

☐ **I have been** involved in the following court proceedings in British Columbia under the *Child, Family and Community Service Act*, the *Family Relations Act*, the *Family Law Act*, or the *Divorce Act* (Canada), and/or in the following court proceedings under comparable legislation in any other jurisdiction, concerning children under my care.

Item #	**Names of the parties to the proceeding**	**Name and location of court in which the proceeding was conducted**	**Date of any orders concerning children under my care made in the proceeding**
1			
2			
3			

The orders referred to in the table above are attached as Exhibits to this affidavit as follows:

(a) The order dated _____ (mmm/dd/yyyy) referred to in Item _____ (1, 2, 3, etc.) above is attached as Exhibit _____ (A, B, etc.) to this affidavit.

(b) The order dated _____ (mmm/dd/yyyy) referred to in Item _____ (1, 2, 3, etc.) above is attached as Exhibit _____ (A, B, etc.) to this affidavit.

(c) The order dated _____ (mmm/dd/yyyy) referred to in Item _____ (1, 2, 3, etc.) above is attached as Exhibit _____ (A, B, etc.) to this affidavit.

British Columbia Ministry of Children and Family Development records check –
To get the Ministry of Children and Family Development record check you must fill out a Section 51 - Consent for Child Protection Record Check and give it to the court registry where you will be filing your application. The registry will let you know when the results arrive and give you a copy to attach to your affidavit.

The record check must be dated within 60 days before the date that the record check is filed.

Indicate the date of the record check and give the record check an exhibit letter. Use the next letter in the alphabet following the orders you attached in the last section. If you had no court proceedings, use "A."

Protection Order Registry records check –
To get the Protection Order Registry record check you must fill out a Request for Protection Order Registry Search and give it to the court registry where you will be filing your application. The registry will let you know when the results from the record check comes in. The registry will then give you a copy to attach to your affidavit.

The record check must be dated within 60 days before the date that the record check is filed.

Indicate the date of the record check and give the record check an exhibit letter. Use the next letter in the alphabet following the orders you attached in the section 8 and the record check in section 9. If you had no court proceedings, use "B."

Criminal records check –
To get a criminal record check, ask at the police station or RCMP detachment in your community.

The record check must be dated within 60 days before the date that the record check is filed.

Indicate the date of the record check and give the record check an exhibit letter. Use the next letter in the alphabet following the orders you attached in the section 8 and the record checks in section 9 and 10. If you had no court proceedings, use "C."

Criminal offences –
Have you been convicted on any other criminal offences missing from the criminal records check that you have not received a pardon or record suspension for? Select the option on the form that applies to your situation.

If yes, provide details of the criminal conviction(s). You do not need to use any special wording. 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).

Criminal charges –
Are you currently charged with a criminal offence (accused of a criminal offence)? Select the option on the form that applies to your situation.

If yes, provide the details required in the table for the particulars of each charge.

Do not sign the affidavit until you are with a commissioner for taking affidavits and they tell you to sign it.

Once the affidavit is sworn/affirmed (signed) with a commissioner, it must be filed within 7 days.

9. Attached to this affidavit and marked as Exhibit _____ (A, B, etc.) is a copy of a British Columbia Ministry of Children and Family Development records check dated _____ (mmm/dd/yyyy).

10. Attached to this affidavit and marked as Exhibit _____ (A, B, etc.) is a copy of a Protection Order Registry protection order records check dated _____ (mmm/dd/yyyy).

11. Attached to this affidavit and marked as Exhibit _____ (A, B, etc.) is a copy of a criminal records check dated _____ (mmm/dd/yyyy) obtained from the _____ (name and location of police force or department from which the criminal records check was obtained).

12. *Select whichever option is correct.*

- ☐ There are no criminal offences, other than those, if any, specified in the criminal records check referred to in paragraph 11 of this affidavit, of which I have been convicted and not pardoned.
- ☐ In addition to the convictions, if any, specified in the criminal records check referred to in paragraph 11 of this affidavit, I have been convicted of, and not pardoned for, the following criminal offences:
  Provide details of any criminal convictions, not referred to in the criminal records check, for which you have not received a pardon

12. *Select whichever option is correct.*

- ☐ I am not currently charged with any criminal offences.
- ☐ I am currently charged with criminal offences. The particulars of each charge are set out below:

Nature of alleged offence	**Date of alleged offence** (mmm/dd/yyyy)	**Name and location of court in which proceedings are outstanding**

Sworn or affirmed before me

at _____ (city), British Columbia

on _____ (date)

A Commissioner for taking Affidavits in British Columbia [print name or affix stamp of commissioner]	Signature