

## **EXCERPT from Family Relations Act [RSBC 1996] CHAPTER 128**

### **Parental guardianship**

**27** (1) Subject to section 28, whether or not married to each other and for so long as they live together, the mother and father of a child are joint guardians unless a tribunal of competent jurisdiction otherwise orders.

(2) Subject to subsection (4), section 28 and section 30, if the father and mother of a child are or have been married to each other and are living separate and apart,

(a) they are joint guardians of the estate of the child, and

(b) the one of them who usually has care and control of the child is sole guardian of the person of the child unless a tribunal of competent jurisdiction otherwise orders.

(3) If the father and mother of a child

(a) have not married each other,

(b) are living separate and apart, and

(c) have been joint guardians under subsection (1) or under the order of a tribunal of competent jurisdiction,

subsection (2) applies to the father, mother and child as though the father and mother were married.

(4) If a tribunal of competent jurisdiction

(a) makes absolute a decree of divorce,

(b) renders judgment granting a divorce and a certificate has been or could be issued under the *Divorce Act* (Canada) stating that the marriage was dissolved,

(c) makes an order for judicial separation, or

(d) declares a marriage to be null and void,

a person granted custody by order in the proceeding is sole guardian unless a tribunal of competent jurisdiction transfers custody or guardianship to another person.

(5) Subject to section 28, if the father and mother of a child

(a) have not been married to each other during the life of the child or 10 months before the child's birth,

(b) are living separate and apart, and

(c) do not share joint guardianship under this section or under an order of a tribunal of competent jurisdiction,

the mother is sole guardian unless a tribunal of competent jurisdiction otherwise orders.

### **Guardianship agreement**

**28** (1) The father and mother described in section 27 (2) or (5) may, by a written agreement between them, provide that, during the term of the agreement,

(a) they are joint guardians of their child, or

(b) one of them is sole guardian of their child.

(2) The making of an agreement under subsection (1) does not bar the jurisdiction of a court to make an order respecting guardianship.

### **Loss of guardian**

**29** (1) Subject to subsection (2), if a joint guardian dies, the survivors or sole survivor continue as joint or sole guardians respectively.

(2) If a guardian dies, a surviving mother or father of the child who is not a guardian at the time of the deceased's death does not become a guardian unless the surviving mother or father has been appointed under section 50 of the *Infants Act* or is, by order, appointed under section 30 of this Act.

(3) If a child otherwise has no guardian or if the guardian appointed is dead, refuses or is incompetent at law to act,

(a) the director under the *Child, Family and Community Service Act* is guardian of the person of the child,

(b) the Public Guardian and Trustee is guardian of the estate of the child, or

(c) paragraphs (a) and (b) both apply,

as circumstances require, unless a tribunal of competent jurisdiction otherwise orders.

(4) If a guardian and a person who is not a guardian of a child marry, the marriage in no way

(a) diminishes the powers, rights or duties of the guardian, or

(b) vests in the other person the powers, rights or duties of a guardian.

### **Jurisdiction of courts to make or give effect to guardianship**

**30** (1) Subject to this Act, a court may, on application,

(a) appoint a guardian, or

(b) remove from office a guardian appointed or acting by virtue of this Part or a deed or testamentary appointment.

(2) If a child is over 12 years of age, a court must not make or give effect under subsection (1) to an appointment unless

(a) the child consents in writing to the appointment, or

(b) if the child withholds consent to the appointment, the court is satisfied that the appointment is necessary in the best interests of the child.

(3) A person other than the father or mother of a child must not, under subsection (1) (a), be appointed guardian unless the court is satisfied that each parent of the child consents in writing to the appointment or, if a necessary consent has not been given, that

(a) the parent who could give or withhold consent is not reasonably available, or

(b) the consent is being unreasonably withheld.

(4) An order must not be made under subsection (1) unless the present and prospective guardians have been given notice and an opportunity to be heard in the proceeding.

(5) If satisfied that circumstances warrant, the court may grant an exemption from subsection (4) respecting a present guardian.

### **Guardian under a *Child, Family and Community Service Act* order**

**30.1** (1) Despite section 30 (3), a person who has custody of a child under section 54.1 of the *Child, Family and Community Service Act* is for the purposes of this Act, a guardian appointed under section 30 (1).

(2) Despite section 30 (3), the consent of a parent of a child is not necessary under that section if

(a) the parent's guardianship powers, rights and duties with respect to the child were terminated by a continuing custody order under the *Child, Family and Community Service Act*, and

(b) another person has custody of the child under section 54.1 of the *Child, Family and Community Service Act*.

### **Security**

**31** (1) The Supreme Court may order a guardian or guardian of the estate of a child to give the security the court considers necessary for the proper discharge of the guardianship powers, rights and duties and may order the guardian or guardian of the estate, as the case may be, or the personal representative of that person to

(a) render a true and just account of all property of the child administered by him or her, and

(b) deliver and pay over the property to the person entitled after deducting only such reasonable amount for his or her expenses and charges that the court may approve

on the termination of the guardianship.

(2) If the giving of security is ordered under subsection (1), the Public Guardian and Trustee is guardian of the estate of the child until the security is given.

(3) Despite subsection (1), the court must not order the Public Guardian and Trustee to give security under this section.