

# Report on Appointing a Guardian and Standby Guardianship

# British Columbia Law Institute

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- (a) promote the clarification and simplification of the law and its adaptation to modern social needs,
- (b) promote improvement of the administration of justice and respect for the rule of law, and
- (c) promote and carry out scholarly legal research.

The Institute is the effective successor to the Law Reform Commission of British Columbia which ceased operations in 1997.

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*Support for this Project has been provided by the  
British Columbia Ministry of Attorney General*  
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## National Library of Canada Cataloguing in Publication

### British Columbia Law Institute

#### Report on appointing a guardian and standby guardianship.

(BCLI report; no. 30)

Includes bibliographical references.

ISBN 1-894278-22-4

1. Guardian and ward—British Columbia. I. Title. II. Series.

KEB208.B75 2004

346.71101'8C2004-902032-3

KF553. B75 2004

# INTRODUCTORY NOTE

The British Columbia Law Institute has the honour to present:

## **Report on Appointing a Guardian and Standby Guardianship**

Parents and other guardians of small children want to feel secure in the knowledge that, if they become unable to care for those children, through death or otherwise, their children's care will be provided for through a process that is both timely and certain. This Report contains recommendations that will make the appointment of guardians accessible to more families.

The recommendations would simplify the appointment process and expand the category of persons who can appoint a guardian (to include guardians who are not parents). They also introduce the concept of "standby guardianship" whereby a guardian can appoint another person to share guardianship during a period of illness or incapacity.

Gregory K. Steele, Q.C.  
Chair,  
British Columbia Law Institute

March 2004



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## Report on Appointing a Guardian and Standby Guardianship

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### I. Introduction

This Report concerns four issues related to the guardianship of children:

- (a) Whether provisions relating to testamentary guardianship belong in the *Family Relations Act*.
- (b) Whether a guardian who is not a parent should be able to appoint a person to act as guardian of the child after the appointing guardian's death (a testamentary guardian).
- (c) Whether there should be a mechanism by which a guardian can appoint a "standby guardian" who will assume joint guardianship during the lifetime of the appointing guardian.
- (d) Whether a "simple form" should be created for the appointment of a guardian outside of a formal will or deed.

### II. Whether Provisions Relating To Testamentary Guardianship Belong In The *Family Relations Act*

The three general categories of guardianship over children are as follows:

- parental guardianship
- guardians appointed by a court
- guardians appointed by will or deed ("testamentary guardians")

Guardianship issues generally are governed in British Columbia by the *Family Relations Act*, with the exception of the third category (testamentary guardians).<sup>1</sup> Testamentary guardianship is currently provided for in section 50 of the *Infants Act*,<sup>2</sup> which allows a parent to appoint a person to serve as guardian of the parent's "infant" child (under the age of 19) in the event of the parent's death.

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1. R.S.B.C. 1996, c. 128. Section 27 of that *Act* provides that the two parents of a child are *prima facie* joint guardians of that child (at common law, the father was the sole guardian of the person and property of his child throughout the period of infancy). Parents may make a written agreement providing that one or both will be the guardian of their child under section 28 of the *Act*. The power of the Court to appoint and remove guardians in the best interests of the child is derived from the inherent jurisdiction of the Crown as *parens patriae* ("parent of his country," referring to the state as guardian of minors and incompetent people), and is provided for in s. 30 of the *Family Relations Act*.

2. R.S.B.C. 1996, c. 223.

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The recommendation is that the testamentary guardianship provisions currently located in the *Infants Act* be relocated to the *Family Relations Act*. The other sections of the *Infants Act* are primarily concerned with the capability of children to enter into legal relationships (the status and effect of contracts made by minors, for example, and the ability of minors to own and dispose of property). Testamentary guardianship concerns the relationship between the child, other family members, and “the world,” including the State as *parens patriae*, and therefore belongs conceptually with the other guardianship issues dealt with in the *Family Relations Act*. Placing all provisions relating to the guardianship of children together in one piece of legislation is also sensible from a practical (“user friendly”) perspective, and would bring into application the definition of “guardian” set out in the *Family Relations Act*.

There are no apparent compelling reasons for keeping the testamentary guardianship provisions within the *Infants Act*. Guardianship provisions are included in comprehensive “Children Acts” in such jurisdictions as Saskatchewan and the UK, but British Columbia’s *Infants Act* is much more limited in scope.

### Recommendation 1

*That the testamentary guardianship provisions currently located in the Infants Act be relocated to the Family Relations Act.*

### III. Whether A Guardian Who Is Not A Parent Should Be Able To Appoint A Testamentary Guardian

Under the current legislation (section 50, *Infants Act*)<sup>3</sup> a parent is the only category of guardian who can appoint a testamentary guardian. Is this restriction justified?

Legislation enabling a parent to appoint a guardian in the event of his or her death is a modernised re-enactment of the *Tenures Abolition Act, 1660*,<sup>4</sup> which enabled a father to appoint a person as guardian of his child. That appointment would take effect after the father’s death. Modern legislation has extended the ability to appoint a testamentary guardian to mothers as well as fathers.

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3. *Ibid.*

4. 12 Car. II, c. 24.

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The Law Reform Commission of Saskatchewan<sup>5</sup> and the Alberta Law Reform Institute<sup>6</sup> have recommended that legislation allow for the appointment of testamentary guardians by non-parental guardians. The Saskatchewan Law Reform Commission concluded that “Persons entrusted with custody [guardianship of the person] of the child should be allowed to name a successor in the event of their deaths. If someone feels more entitled to have custody of the child than the person so named, they can apply for custody and the court will decide what is best for the child.”<sup>7</sup> The Alberta Law Reform Institute defined the power to name a testamentary guardian as “one of the usual incidents of guardianship when it is held by a parent” and concluded that there was “no reason to treat other guardians differently.”<sup>8</sup> Neither of these recommendations have been acted upon.<sup>9</sup>

Ontario<sup>10</sup> and the United Kingdom<sup>11</sup> are two jurisdictions that currently permit a guardian who is not a parent to appoint a person to act as guardian of the child after the guardian’s death.

The relevant provisions of the *Children’s Law Reform Act* (Ontario) are as follows:

61. (1) A person entitled to custody of a child may appoint by will one or more persons to have custody of the child after the death of the appointor. R.S.O. 1990, c. C.12, s. 61 (1).
  
- (2) A guardian of the property of a child may appoint by will one or more persons to be guardians of the property of the child after the death of the appointor. R.S.O. 1990, c. C.12, s. 61 (2).

No case law was found dealing with either provision.

On the one hand, maintaining the restriction recognises that parental appointment of testamentary guardians is an exception to the rule; outside of that exception, the importance of guardianship, and the *parens patriae* jurisdiction of the Crown, justifies court oversight.

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5. *Tentative Proposals Relating to Testamentary Custody and Guardianship of Children*, 1984, p. 21.
  6. *Family Law Project: Child Guardianship, Custody and Access*, Report for Discussion No. 18.4, October 1998.
  7. *Supra* note 5.
  8. *Supra* note 6, at 101, re recommendation no. 13.4.
  9. *See, Children’s Law Act*, S.S. 1997, c. C-8.2; *Family Law Act*, S.A. 2003, c.F-4.5 (unproclaimed).
  10. *Children’s Law Reform Act*, R.S.O. 1990, c. C.12, s. 61.
  11. *Children Act 1989*, c. 41, s.5.
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Guardianship was traditionally concerned with the control of property within the relationship between guardian and ward (whereby the guardian controlled the ward's property). The modern concept of guardianship involves the legal relationship between the child and the "world" and the guardian and the "world" as well as the relationship between the guardian and child, a "global" as opposed to purely personal status. It must therefore be relatively easy for the "world" to ascertain the identity of a guardian with certainty, an objective which is facilitated by retaining court involvement in the process.

On the other hand, if testamentary guardianship is sufficiently workable where parents are able to appoint without oversight, why not extend the power to other guardians? If the "private" appointment of guardians through testamentary guardianship is a current source of problems, the exception itself should be re-visited. There is no apparent reason to assume that a guardian's choice would be less sound than a parent's. The private appointment of testamentary guardians is an efficient mechanism for minimising the possibility of a "gap" in the guardianship of children.

### Recommendation 2

*That a guardian who is not a parent should be able to appoint a person to act as guardian of the child after the appointing guardian's death.*

## IV. "Standby Guardianship" Taking Effect During The Life Of The Appointing Guardian

"Standby guardianship" refers to the appointment of a guardian that takes effect on the occurrence of some future "triggering" event (after appointment the guardian "stands by" until the trigger has occurred). Testamentary guardianship in British Columbia, whereby a guardian appointed in a parent's will automatically assumes active guardianship on the death of the parent (the "trigger" in this case), is one example of the "standby" mechanism.

Standby guardianship that would "trigger" or take effect during the lifetime of the guardian provides for the care of the child during any period of incapacity that may precede death. During the lifetime of the guardian (after the triggering event has occurred but before the guardian's death) guardianship may be exercised concurrently by the appointing guardian and the "standby" as joint or co-guardians (where the enabling legislation so provides). Concurrent authority allows parents and other guardians to provide for a child's care without giving up their own guardianship rights, an important consideration for many even where the appointing guardian is effectively unable to carry out the rights and responsibilities associated with guardianship after the triggering event has occurred.<sup>12</sup> The joint guardianship activated by the

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12. Newsletter of the National Abandoned Infants Resource Centre, Vol. 10, No. 2 (University of California at Berkeley, 2000).

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triggering event would convert into sole guardianship on the death of the appointing guardian. Legislation may also provide that, during the lifetime of the appointing guardian, the standby guardianship may be revoked at any time.

Legislation permitting standby guardianship that would be “triggered” during the lifetime of the appointing guardian developed in the United States as a response to the AIDS crisis, specifically, the plight of the AIDS orphans.<sup>13</sup> Standby guardianship has been endorsed by the federal government of the United States,<sup>14</sup> the American Bar Association<sup>15</sup> and the American Academy of Paediatrics,<sup>16</sup> and standby guardianship legislation had been enacted in seventeen American states as of 2003.<sup>17</sup> These statutes generally incorporate similar elements<sup>18</sup> and share the same inter-related objectives: to arrange for the child’s care during the period of the guardian’s illness *before* that illness reaches a crisis point; to provide a consistent caregiving “bridge” for the child between the guardian’s illness and death; to enable a guardian to make secure and permanent arrangements for a child on the basis of that child’s best interests (recognising that a guardian will be best placed to choose his or her own replacement). The over-arching objective is to provide consistent caregiving for the child, and standby guardianship is sometimes referred to as “voluntary legal permanency planning.”<sup>19</sup> It is notable that the language of “permanency planning” originates in foster care policy; for many of the “AIDS orphans” the foster care system will be the most likely alternative where no standby guardian has been appointed.

Medical treatment has changed dramatically over the last fifteen years and people with HIV/AIDS are now living longer in relative good health, but standby guardianship continues

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13. New York state, with one of the largest populations of women with HIV/AIDS in the United States, was the first state to enact a standby guardianship statute in 1992. N.Y. Surr. Ct. Proc. Act Law § 1726 (Consol. 1992).
  14. Section 403 of the *Adoption and Safe Families Act* of 1997, Pub. L. 105-89, 2134 Stat., reads: “It is the sense of Congress that the States should have in effect laws and procedures that permit any parent who is chronically ill or near death, without surrendering parental rights, to designate a standby guardian for the parent’s minor children, whose authority would take effect upon: 1) the death of the parent; 2) the mental incapacity of the parent; the physical debilitation and the consent of the parent.”
  15. Y. Samerson, *Choices for terminally ill parents: a guide for state lawmakers* (1997) Washington, D.C.: American Bar Association Center on Children and the Law.
  16. American Academy of Pediatrics, 1999.
  17. *Standby Guardianship Project*, online: National Abandoned Infants Resource Centre (August 2003), <<http://aia.berkeley.edu>>.
  18. *See Summary of Standby Guardianship Statutes by State, May 2003*, online: National Abandoned Infants Resource Center <<http://aia.berkeley.edu/media/pdf/sg>>.
  19. *Ibid.*
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to be useful for families affected by HIV/AIDS and for the many children who are orphaned every year due to the death of a guardian from illnesses such as cancer (cancer rates among adults in the child bearing/raising years are on the rise).<sup>20</sup> The increase in single parent families makes it more likely that children will be effectively orphaned if that parent dies. Standby guardianship may also be useful for older grandparents caring for grandchildren, who may be worried about their ability to continue acting as primary caregivers.

### 1. Standby v. Temporary Guardianship

A report prepared for the American Bar Association in 2000 (*Standby Guardian Laws: A Guide for Legislators, Lawyers and Child Welfare Professionals*)<sup>21</sup> suggested that, despite the “theme of death and sickness run[ning] through [the standby guardianship legislation]” and its origins in the HIV/AIDS crisis, it was now time to “free these laws so that they can better serve multiple situations.”<sup>22</sup> The Report cites the example of the custodial parent serving in the army reserves who is called up for active duty, or the parent called away for short periods of time on potentially dangerous assignments like putting out oil well fires.<sup>23</sup> Guardianship would be concurrent during the period of the parent’s absence (the “trigger”) and, in the event of the parent’s death, would convert into permanent sole guardianship. If the parent returned alive, the guardianship of the “standby” could be revoked by the appointing parent.

While a guardian should be able to appoint another person to “stand in” as guardian during the guardian’s absence, the purpose of this kind of arrangement is different in key respects. To continue the example given above, the soldier may wish to have a friend act as temporary guardian during the period of absence, to enable the child to continue attending the same school during this period. The soldier may consider a family member living in a different city to be the more appropriate permanent guardian, however, in the event that he or she is killed overseas. The soldier who wishes a friend to act as both temporary and (potential) permanent guardian may also appoint that friend as a testamentary guardian (the permanent guardianship would be “triggered” by the appointing guardian’s death). A separate mechanism for temporary guardianship may be appropriate to provide the appointing guardian with the

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20. See C. Levine., “The new orphans and grieving in the time of AIDS” in B.O. Dane and C. Levine, eds, *AIDS and the new orphans: coping with death*, (Westport, Connecticut: Auburn House, 1994); L. Willis et al., “Custody Planning: A Retrospective Review of Oncology Patients Who Were Single Parents”, (2001) *Journal of Pain and Symptom Management* Vol. 21 No. 5.

21. Judith Larsen for the American Bar Association Center on Children and the Law and Circle Solutions, Inc. (2000).

22. *Ibid.*, at p. 1-13.

23. *Ibid.*

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flexibility to make the precise kind of arrangement that best suits the needs and wishes of guardian and child.<sup>24</sup>

Legislation which would permit appointment of a temporary guardian was recommended by the Alberta Law Reform Institute Report for Discussion on “Child Guardianship, Custody and Access” released in 1998.

The nomination would have a purpose similar to an enduring power of attorney or an advance directive with respect to personal matters in that it would allow a guardian to plan for contingencies that may occur while the guardian is still alive. The nomination should take effect on the occurrence of the event or condition identified in the nominating document and in accordance with its terms.

### Recommendation No. 19.4

A guardian should be able to appoint a person to act in their place in the event of the guardian’s temporary absence or incapacity to act as guardian.<sup>25</sup>

Temporary guardianship in a more limited set of circumstances is currently provided for under the *Representation Agreement Act*<sup>26</sup> (that a person may authorise a representative to make arrangements for the temporary care, education and financial support of the person’s minor children) and the *Adult Guardianship Act*<sup>27</sup> (that a substitute decision maker may be ordered to make arrangements for the temporary care, education and financial support of the person’s minor children) in British Columbia. Temporary arrangements only are authorised on the assumption that the adult will recover sufficiently to resume independent decision making (and should be able to do so free from any permanent arrangements made by another during the period of the adult’s incapability).<sup>28</sup>

In our view, there is a fundamental distinction between the appointment of a “standby” guardian who will eventually replace the appointing guardian and a substitute who will “stand

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24. It is notable that the ABA (American Bar Association) Report assumes there is no existing mechanism for testamentary guardianship that would be triggered automatically by the appointing guardian’s death, as provided for in the British Columbia legislation (the concern of the ABA Report is to create a mechanism that would allow for something like the appointment of testamentary guardians).
  25. Alberta Law Reform Institute Report for Discussion on “Child Guardianship, Custody and Access” (1998) at 109.
  26. R.S.B.C. 1996, c.405, s.9(1)(f).
  27. R.S.B.C. 1996, c.6, s.19(i).
  28. See, R. Gordon, *2002 Annotated British Columbia Representation Agreement Act, Guardianship Act and Related Statutes* (Toronto: Carswell, 2002) at 194.
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in” for the appointing guardian during a temporary period of absence or incapability. The question of whether legislation should permit the appointment of temporary guardians in circumstances other than those contemplated by the *Representation Agreement Act* and *Adult Guardianship Act* is a matter that requires further study.

### 2. The scope of standby guardianship

The purpose of standby guardianship is to plan for the permanent guardianship of children where the death of a parent or other sole guardian is anticipated and to provide for a bridging period of shared guardianship, as needed, during the period preceding death. The “triggers” that would activate a standby guardianship appointment should therefore be limited to death, mental incapacitation, or physical debilitation. The guardianship would take effect immediately upon the occurrence of the “trigger” without a requirement of further procedure (consistent with testamentary guardianship). Certification by a person chosen and named by the appointing guardian (for example, an examining doctor, a relative, or the appointing guardian personally) would be sufficient to establish that the triggering event has occurred. No further steps would be required in the absence of dispute (the *Family Relations Act* allows for review of a guardianship appointment by the court).<sup>29</sup>

The purpose of standby guardianship also justifies restricting its use to situations involving a sole guardian. Joint guardianship (where there is a surviving joint guardian) is an existing mechanism that ensures there is no guardianship “gap” in the event of a guardian’s death. Guardianship of the child will also be shared during the period preceding the guardian’s death, obviating the need for a “standby” mechanism which would allow for shared guardianship during this period. Standby guardianship is, in one sense, a variant of the joint guardianship concept (the key point of difference being the trigger that initiates the relationship, where joint guardianship is subsisting from the time of creation).

### Recommendation 3

*That the Family Relations Act be amended to allow for the appointment of a standby guardian.*

### V. Whether A “Simple Form” Should Be Created For The Appointment Of A Guardian Outside Of A Formal Will Or Deed.

Parents and other guardians who do not have significant property are less likely to prepare a will and, therefore, less likely to appoint a testamentary guardian under the current regime. Single parents, for example, may not consider the expense associated with making a will to be a priority, although appointment of a “standby” (testamentary or otherwise) is especially important where there is no joint guardian waiting in the wings (see discussion above). A

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29. *Family Relations Act*, s. 30.

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simple form for the appointment of standby guardianship would encourage the “private” (without court involvement) appointment of guardians and therefore make it less likely that a gap in guardianship will occur (while a suitable guardian is found, or where would-be guardians contest for the appointment). Use of the draft form would be sufficient, but not mandatory, and a testamentary or standby guardian could be appointed without using the form so long as the requirements set out in the legislation were met. Appointment of a testamentary guardian in a will would also continue to be possible as an alternative to the “simple form” procedure.

The *Children Act 1989* (UK) provides that a parent or other guardian of a child may appoint a testamentary guardian in a written and dated document that is signed by the person making the appointment.<sup>30</sup> If the person making the appointment is unable to sign, two witnesses are required. The UK legislation was intended to “facilitate the private appointment of guardians” by relaxing the formal requirements.<sup>31</sup>

A simple standard form may be also be useful for a parent or other guardian who wants to appoint a “standby guardian” to take effect during the lifetime of the appointing guardian on the “trigger” of mental incapacity or physical debilitation. A single form, in which the appointing guardian would choose the “trigger” (including death) that would activate the guardianship, would allow the appointing guardian to create either a testamentary guardianship (to take effect on death only) or a standby guardianship (creating a joint guardianship which would then convert into sole guardianship on the death of the appointing guardian) as the guardian sees fit. A draft form (Form X) is appended here as Appendix B.

The draft form incorporates the two witness requirement of the *Children Act 1989* (UK) where the guardian is unable to sign the document. The signature of the standby guardian indicates that the person chosen accepts the appointment, and is therefore to be encouraged as facilitating the success of the arrangement. In the event that the chosen person does not wish to accept the appointment, the appointing guardian can then choose another person to act as standby guardian. Failure to obtain the signature of the standby guardian should not invalidate an otherwise valid appointment, however.

### Recommendation 4

*That the simple form set out as “Form X” be enacted through regulation under the Family Relations Act.*

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30. *Children Act 1989*, section. 5.

31. A. Bainham, “The Children Act 1989: Welfare and Non-Interventionism” [1990] Fam. Law 143.

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### VI. Conclusion

The recommendations contained in this Report contemplate a range of guardianship options to meet the particular needs of guardians and the children in their care. All provide for consistent, planned-for caregiving with minimal disruption and uncertainty. The objective is to encourage guardians to plan for the care of their children through the development of procedures that are simple and require no costly and time consuming formal processes. Formal court oversight is always available where questions arise regarding the suitability of the appointment.

The American experience suggests that those who would benefit most from both standby guardianship and a simple form mechanism for the creation of testamentary guardianship- sole guardians contemplating declining health and ability, with death occurring during the minority of the children in their care- will not be in a position to take advantage of new guardianship mechanisms, even in “simple” form, without some level of assistance.<sup>32</sup> Serious illness may be overwhelming, creating multiple new challenges simultaneously at a time of high personal stress. Sole guardians may be alienated from other family members, especially where HIV/AIDS is a factor, and the choice of an appropriate permanent guardian will require careful consideration and planning (contacting potential guardians ahead of time, for example). From the child’s point of view it is crucial to minimise uncertainty and conflict during the period immediately following a sole guardian’s death. Consultation with hospital social workers and others providing support to people with serious illnesses may be useful in terms of identifying how to make the guardianship planning tools provided for in the legislation recommended in this Report accessible to those who need it most.

### VII. Summary of Recommendations

The Law Institute’s recommendations are as follows:

1. *That the testamentary guardianship provisions currently located in the Infants Act be relocated to the Family Relations Act.*
2. *That a guardian who is not a parent should be able to appoint a person to act as guardian of the child after the appointing guardian’s death.*
3. *That the Family Relations Act be amended to allow for the appointment of a standby guardian.*

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32. See, L. Willis, M. Peck, S. Sells, K. Rodabaugh “Custody Planning: A Retrospective Review of Oncology Patients Who Were Single Parents” *Journal of Pain and Symptom Management* Vol. 21 No. 5 May 2001; also, discussion of the LEGACY program (Legally Entrusted Guardians for AIDS-Affected Children and Youth), online: Volunteers of America Greater New York <<http://www.volunteersofamerica.org>>.

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4. *That the simple form set out in “Form X” be enacted through regulation under the Family Relations Act.*

Draft legislation to implement these recommendations is set out in Appendix A to this Report. A draft “simple form” to be enacted through regulation under the *Family Relations Act* is set out in Appendix B.

### **VIII. Acknowledgment**

The Institute wishes to acknowledge the contribution of Margaret Hall, Staff Lawyer, who undertook the research and preparation of this Report.

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### Appendix A Draft Legislation

#### Family Relations Amendment Act, 2004

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

1. The *Family Relations Act*, R.S.B.C. 1996, c. 128, is amended by adding the following as Part [ ]:

#### Appointment of testamentary guardian

- XX1
- (1) A guardian of a minor may appoint an individual who will become guardian of the minor on the appointing guardian's death.
  - (2) An individual appointed as guardian under this section will not have greater authority or powers over the estate or person of the minor than the guardian who made the appointment.
  - (3) An appointment under this section may be made in a will.
  - (4) If not made in a will, to be valid, an appointment under this section must be in writing and signed by
    - (a) the appointing guardian before a witness who would not become guardian by operation of the appointment, or,
    - (b) if the appointing guardian is unable to sign, attested and signed by two witnesses who would not become guardians by operation of the appointment.
  - (5) An appointment made under this section will take effect only where there is no continuing joint guardian of the minor.
  - (6) An appointment of a testamentary guardian may be in Form X.

#### Appointment of a standby guardian

- XX2
- (1) In this section "standby guardian" means an individual appointed under this section who would become guardian of a minor when the conditions specified in the appointing document are met during the lifetime of the appointing guardian.

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- (2) An appointment made under this section will take effect only where there is no continuing joint guardian of the minor.
- (3) A guardian of a minor may appoint an individual who will become guardian of the minor on the mental incapacity or physical debilitation of the appointing guardian, as specified in the appointing document.
- (4) To be valid, an appointment made under this section must be
  - (a) in writing;
  - (b) signed by the appointing guardian before a witness who would not become guardian by operation of the appointment, or
  - (c) if the appointing guardian is unable to sign, attested and signed by two witnesses who would not become guardians by operation of the appointment.
- (5) An appointment of a standby guardian may be in Form X .
- (6) A standby guardian will become the guardian of the minor when the appointing guardian is no longer able to care for the minor by reason of the mental incapacity or physical debilitation of the appointing guardian, as provided for in the appointment.
- (7) The appointing document may provide for certification, by one or more persons designated in the document, that the degree of mental incapacity or physical debilitation referred to in subsection (6) has occurred and where such a certification is made it is conclusive.
- (8) The appointing guardian and an individual who becomes a guardian by operation of subsection (6) are joint guardians and are required to consult one another to the fullest possible extent regarding the care and upbringing of the minor.
- (9) An individual who becomes a guardian by operation of subsection (6) will become the sole guardian of the minor on the death of the appointing guardian if the appointment remains at the time of death.
- (10) The appointing guardian, if mentally competent, may revoke the appointment of the standby guardian at any time prior to the death of the appointing guardian.

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- 2 The Act is amended
- (a) in section 29(2) by deleting the words “section 50 of the *Infants Act*” and substituting “section XX1 (“appointment of a testamentary guardian”) or section XX2 (“appointment of a standby guardian”).
  - (b) in section 30(1)(b) by deleting the words “or a deed or testamentary appointment.”

### **Consequential Amendment: *Infants Act***

- 3 Section 50 of the *Infants Act*, R.S.B.C. 1996, c. 223 is repealed.

### **Commencement**

- 4 This Act comes into force by regulation of the Lieutenant Governor in Council.

## Report on Appointing a Guardian and Standby Guardianship

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### Appendix B

#### Form X

#### Appointment of a Standby or Testamentary Guardian

Any person who is a guardian of a child may make an appointment using this form, but if at the date the appointment is to take effect, someone other than the person making this appointment, or the person appointed, is a joint or sole guardian of the child, this appointment is void.

This appointment is made on \_\_\_\_\_ 20\_\_ (Date)

by \_\_\_\_\_ (child's guardian)

of \_\_\_\_\_ (guardian's address)

I appoint the following individual:

\_\_\_\_\_ (name of standby or testamentary guardian)

of \_\_\_\_\_ (address of standby or testamentary guardian)

to become the guardian of

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ (name of child or children)

upon my the occasion of my (check one or more):

death

inability to care for the child or children named, as certified by

\_\_\_\_\_

## Report on Appointing a Guardian and Standby Guardianship

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in accordance with the *Family Relations Act*, to have the same powers and responsibilities of guardianship as I currently have, subject to the following conditions and restrictions:

-----  
*cross out this line if there are no conditions or restrictions*

-----  
signature of child's guardian

-----  
signature of witness

-----  
signature of standby or testamentary guardian (optional)

Witness if guardian unable to sign document (cross out this portion if not applicable)

I attest that \_\_\_\_\_ (child's guardian) has made the above appointment and am unable to sign this document.

-----  
signature of witness 1

-----  
address of witness 1

-----  
signature of witness 2

-----  
address of witness 2

-----  
signature of standby or testamentary guardian (optional)

## Report on Appointing a Guardian and Standby Guardianship

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