

BILL NO. 106

(as passed, with amendments)



*2nd Session, 58th General Assembly
Nova Scotia
51 Elizabeth II, 2002*

Government Bill

Guardianship Act

CHAPTER 8 OF THE ACTS OF 2002

The Honourable Michael G. Baker, Q.C.
Minister of Justice

[First Reading](#): April 3, 2002 (LINK TO BILL AS INTRODUCED)

Second Reading: May 6, 2002

[Third Reading](#): May 28, 2002 (WITH COMMITTEE AMENDMENTS)

Royal Assent: May 30, 2002



An Act Respecting the Guardianship of Children

Be it enacted by the Governor and Assembly as follows:

1 This Act may be cited as the *Guardianship Act*.

2 In this Act,

(a) "child" means a person who is unmarried and is under the age of majority and includes a child who is unborn at the death of the child's father;

(b) "Public Trustee" means the Public Trustee appointed pursuant to the *Public Trustee Act*;

(c) "Supreme Court" means the Supreme Court of Nova Scotia.

3 (1) Upon application, the Supreme Court may appoint a parent of a child or another person as a guardian of the property of the child.

(2) The Court may appoint more than one guardian.

(3) Subject to an agreement between the parents of the child or a court order, the parents are equally entitled, as between themselves, to be appointed as guardians.

4 In deciding an application for the appointment of a guardian of the property of a child, the Supreme Court shall consider all relevant circumstances including, but not limited to,

(a) the ability of the proposed guardian to care for and manage the property;

(b) the merits of plans of the proposed guardian for the care and management of the property; and

(c) the views and preferences of the child if those views and preferences can be reasonably ascertained.

5 Upon appointing a guardian of the property of a child, the Supreme Court may

(a) determine any aspects of the incidents of the guardianship;

(b) limit the length of time during which the guardianship may be exercised;

(c) limit the property in respect of which the guardianship may be exercised;

(d) make any other decision respecting the guardianship that the Court considers necessary.

6 (1) Subject to subsection (2), the guardian of the property of a child shall enter into a bond for the performance of the guardian's duties and such bond shall be in such terms, with or without surety, as the Supreme Court may require.

(2) Where the Court is of the opinion that a bond is not required, the Court may make an order dispensing with any bond.

(3) Any bond required by this Section is to be filed with the Court.

(4) Notwithstanding subsection (1), the Public Trustee is not required to enter into a bond.

7 (1) Unless the Supreme Court orders otherwise, the guardian of the property of a child

(a) has, after filing with the Court any bond required by the Court pursuant to this Act,

(i) charge of and is responsible for the care and management of the property of the child, and

(ii) the right to receive any money due and payable to the child and give a release for it; and

(b) may appear in court and prosecute or defend any action or proceedings in which the property of the child is or may be affected.

(2) Where more than one guardian is appointed, the guardians jointly have charge of and are responsible for the care and management of the property.

(3) Where there is more than one guardian and they are unable to agree on a matter respecting the care and management of the property of the child, any of the guardians may apply to the Supreme Court for directions and thereupon the Court may make any order it considers appropriate.

8 (1) Where a person appoints a trustee of property that the person has devised, bequeathed or given to a child, the trustee is entitled to receive and hold that property for the child in accordance with the terms of the trust.

(2) For greater certainty, where a person authorizes, in writing, another person to receive property that the first person has devised, bequeathed or given to a child, that other person is a trustee of that property within the meaning of subsection (1).

9 A guardian of the property of a child is subject to the *Trustee Act*.

10 (1) Notwithstanding Section 37 of the *Public Trustee Act*, on the application of any person considered by the Supreme Court as an appropriate person to represent the interests of a child, the Court may require that a guardian or trustee of the property of a child, submit his or her accounts with respect to the administration of the property to the Court.

(2) The Court may examine and pass the accounts submitted pursuant to subsection (1).

(3) The power of the Court granted by this Section applies to a final passing of accounts after the child has attained the age of majority.

11 Subject to the terms of a trust, the guardian of the property of a child shall transfer to the child all property of the child in the care of the guardian when the child attains the age of majority.

12 A guardian of the property of a child is entitled to payment of a reasonable amount for fees for and expense of management of the property of the child.

13 (1) With leave of the Supreme Court, a guardian of the property of a child may resign as guardian upon such terms and conditions as the Court may determine.

(2) A guardian of the property of a child may be removed by the Court for the same causes for which trustees may be removed or because it is in the best interest of the child.

14 (1) Where no person has been appointed to be guardian of the property of a child and the child is entitled to receive money

(a) as a beneficiary under a life insurance policy;

(b) as a death benefit;

(c) as a beneficiary on an intestacy or under a will and the executor or administrator is not empowered to act as trustee of the child's share,

and no trustee is appointed by the will or other instrument to receive the money, the money shall be paid to the Public Trustee.

(2) Where a person has been appointed to be guardian of the property of a child and the child is entitled to receive money

(a) as a beneficiary under a life insurance policy;

(b) as a death benefit;

(c) as a beneficiary on an intestacy or under a will and the executor or administrator is not empowered to act as trustee of the child's share,

or a trustee is appointed by the will or other instrument to receive the money, the money may be paid to the Public Trustee if the guardian or trustee, as the case may be, requests and the Public Trustee agrees.

(3) The Public Trustee shall account to the guardian of the person of the child according to the provisions of the law, will, trust or other instrument.

15 Where

(a) a child's share in an estate consists of cash or liquid securities; and

(b) the executor or administrator of the estate or a trustee appointed in or under the will or other instrument to hold the cash or liquid securities desires to be discharged,

the Public Trustee, in the discretion of the Public Trustee, may accept the child's share on behalf of the child for care and management while the child is under the age of majority.

16 The Public Trustee may give a release for money received by the Public Trustee pursuant to Section 14 or 15 and the release is as binding and effectual as if the child had executed it and been of the full age of majority at the time it was given.

17 (1) Where a person is under a duty to pay money or deliver personal property to a child and a guardian of the property of the child has not been appointed, the payment of the money or the delivery of the personal property, or a combination thereof, to a value of not more than two thousand dollars by that person in any one-year period to

(a) the child, if the child has a legal obligation to support another person;

(b) a parent with whom the child lives;

(c) a person who has lawful custody of the child; or

(d) a guardian of the person of the child pursuant to Section 19,

discharges the duty to the extent of the amount paid or the value of the personal property delivered, but the total amount paid or total value of property delivered, or combination thereof, under this subsection in respect of the same obligation shall not exceed ten thousand dollars during the time that the child is under the age of majority.

(2) Subsection (1) does not apply in respect of money payable under a judgment or order of a court.

(3) A receipt or discharge for money or personal property not in excess of the amount or value set out in subsection (1) received for a child by a parent with whom the child lives, a person who has lawful custody of the child or the guardian of the child has the same validity as if the Supreme Court has appointed the parent or the person as a guardian of the property of the child.

(4) A parent with whom a child lives, a person who has lawful custody of a child or the guardian of the person of the child pursuant to Section 19 who receives and holds money or personal property referred to in subsection (1) has the responsibility of a guardian of the property of the child for the care and management of the money or personal property.

18 (1) Upon application by a parent of a child or another person, the Supreme Court may, by order, require or approve, or both,

(a) the disposition or encumbering of all or part of the interest of the child in land;

(b) the sale of the interest of the child in personal property;

(c) the payment of all or part of money belonging to the child or of the income from real or personal property belonging to the child, or both.

(2) An order shall be made under subsection (1) only where the Court is of the opinion that the disposition, encumbering, sale or payment is necessary or appropriate for the support or education of the child, will substantially benefit the child or is necessary or advisable to correct or address a problem or defect in the title to a property if correcting or addressing the problem or defect does not adversely affect the child.

(3) An order under subsection (1) may be made subject to the conditions that the Court considers appropriate.

(4) The order of the Court may provide

(a) for the investment, disposal, and application of the proceeds of the sale, mortgage, lease or other disposal of the property and of any capital appreciation and income arising therefrom, for the benefit of the child;

(b) for the maintenance, support or education of the child;

- (c) that any sale, mortgage, lease or other disposal of the property be made by the guardian of the property of the child or person appointed by the Court;
- (d) unless an enactment otherwise provides, that the guardian or person appointed by the court file a bond to be approved by the Court that contains such terms and conditions as are ordered;
- (e) for the submission and filing of the accounts of the guardian or other person, relating to the investment and application of the proceeds of sale, mortgage, lease or other disposal of the property, with the Court for approval annually or at such times and in such manner as the Court may from time to time order;
- (f) for the remuneration of the guardian or other person;
- (g) for such other terms or conditions as the Court thinks just.
- (5)** Unless it is necessary for the maintenance, support or education of the child, a sale, mortgage, lease or other disposal shall not be ordered to be made that is contrary to the provisions of any last will, transfer or conveyance by which the property was devised, transferred or conveyed.
- (6)** Where the Court makes an order pursuant to subsection (1), the Court may order that the guardian or another person named in the order execute the documents necessary to carry out the disposition, encumbrance, sale or payment.
- (7)** The Court by order may give the directions that it considers necessary for the carrying out of an order made pursuant to subsection (1).
- (8)** A document executed in accordance with an order under this Section is as effective as if the child by whom it was executed was of the age of majority or, where executed by another person in accordance with the order, as if the child had executed it and had been of the age of majority at the time.
- (9)** A person does not incur and shall not be considered to incur liability by making a payment in accordance with an order under clause (1)(c).
- 19 (1)** A person having care and custody of a child may appoint by will or by an instrument in writing executed in the presence of two witnesses, one or more persons to be the guardian or guardians of the person of the child after the death of or for any period during the lifetime of the person having care and custody.
- (2)** An unmarried parent who is under the age of majority may make the appointment referred to in subsection (1).
- (3)** An appointment under subsection (1) is effective only if
- (a) the appointment is made by all persons having care and custody of the child on the day immediately before the appointment is to take effect; or
- (b) the person who made the appointment and any person having care and custody of the child die at the same time or in circumstances that render it uncertain who survived the other.
- (4)** Notwithstanding clause (3)(b), where different guardians would result pursuant to that clause by appointments by different persons having care and custody, all the resulting guardians are joint guardians.
- (5)** An appointment under subsection (1) or (2) is not effective without the consent of the person appointed.
- (6)** An appointment under this Section does not restrict or diminish the jurisdiction of the Supreme Court with respect to the appointment or removal of guardians of the person of the child.
- (7)** This Section applies in respect of
- (a) any will made or other instrument executed on or after the day on which this Section comes into force; and
- (b) any will made or other instrument executed before the day on which this Section comes into force if the testator is living on that day.

(8) For greater certainty, on the death of a person having care and custody of the child, any other person having care and custody is the guardian of the person of the child unless the Court appoints a guardian of the person of the child.

(9) An appointment under this Section is effective on the death of the appointer without the grant of probate.

20 This Act does not deprive the Supreme Court of its inherent jurisdiction to make orders with respect to children.

21 An order under this Act is effective notwithstanding that an appeal is taken from the order, unless the Supreme Court or the Nova Scotia Court of Appeal orders otherwise.

22 (1) For the purpose of construing an instrument, Act or regulation, unless the contrary intention appears, a reference to a guardian with respect to the person of a child shall be construed to refer to custody of the child.

(2) Subsection (1) applies to an instrument, Act or a regulation made under an Act made or enacted before or after the coming into force of this Act.

23 The Governor in Council may make regulations

(a) defining any word or expression used in this Act and not defined in this Act;

(b) respecting any matter or thing that the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

24 Chapter 189 of the Revised Statutes of Nova Scotia 1989, the *Guardianship Act*, is repealed.

25 Section 6 of Chapter 379 of the Revised Statutes, 1989, the *Public Trustee Act*, is repealed.

26 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.

