

Seeking Guardianship of a Child: [Family Law in Manitoba](#)

When someone other than a parent wants to assume legal responsibility to care for a child, that person can apply to the court for an order of private guardianship.

A judge considering an application for private guardianship must consider whether the order would be in the children's best interests. **It would be wise to discuss your situation with a lawyer** who can advise you as to the options available.

Part VII of The Child and Family Services Act deals with legal guardianship and access to a child by non-parents. It provides that any adult may apply to the court for an order of guardianship respecting a child. Formal notice of such an application must be given to the parents of the child, any other legal guardian and the child if he/she is over twelve years of age, as well as any child and family services agency that has care of the child. The court must decide a guardianship application based on what the court finds to be in the child's best interests.

Applying for guardianship of a child may be a complicated process and it would be best for you to consult with a lawyer who practices family law. If you don't think you can afford to consult with a lawyer, you may wish to contact Legal Aid Manitoba to see if you qualify for their services. Information on Legal Aid eligibility can be found by visiting their website at www.legalaid.mb.ca or by calling (204) 985-8500 in Winnipeg or toll-free at 1-800-261-2960.

You might also wish to contact the **Community Legal Education Association (CLEA)** to discuss your situation. **CLEA provides a Law Phone-in and Lawyer Referral Program.** They can be reached at (204) 943-2305 for legal questions and **(204) 943-3602 for lawyer referral or toll-free at 1-800-262-8800.** Their website is www.communitylegal.mb.ca. As well, the Legal Help Centre, a not-for-profit legal information clinic located at the University of Winnipeg, is another resource for information and advice about legal issues. Their website is www.legalhelpcentre.ca.

The general steps for an application for guardianship are as follows:

1. Obtain Child Abuse Registry and Criminal Record Checks.
2. File and serve Notice of Application for Guardianship (Form 70F) and Affidavit (Form 4D)
http://web2.gov.mb.ca/laws/rules/form_2e.php?form=70F
http://web2.gov.mb.ca/laws/rules/form_2e.php?form=4D
3. Attend Master's Court on date set out on Notice of Application of Guardianship.

4. If the matter is uncontested and a guardianship assessment is filed, the file will be sent to the Family Hearings Coordinator for a duty judge to consider:
 - (a) The duty judge may granted the uncontested Guardianship Order;
 - (b) The duty judge may require further evidence and schedule an oral hearing.

5. If the matter is contested it will go to the CP Intake Court:
 - (a) If it is no longer contested after an appearance, then a Guardianship Order can be granted;
 - (b) If the matter is still contested pre-trial conferences and trial dates will be scheduled.

6. Another attempt to resolve the matter at the pre-trial conference is made. If the application remains contested, then trial scheduling and trial readiness will be discussed.

The Court of Queen's Bench Rules, The Child and Family Services Act, and notices and practice directions should be reviewed if an individual is filing for guardianship:

The Child and Family Services Act

<http://web2.gov.mb.ca/laws/statutes/ccsm/c080e.php>

[Notices and Practice Directions](#)

<http://www.manitobacourts.mb.ca/court-of-queens-bench/procedure-rules-and-forms/>

The Court of Queen's Bench Rules

<http://web2.gov.mb.ca/laws/rules/qbr2e.php#70.03>

Guardianship

70.03(3) A proceeding in which guardianship of a child is sought shall be commenced by filing a notice of application for guardianship in Form 70F and the title shall show an applicant for guardianship as the guardianship applicant.

Guardianship application with child support application

70.03(4) If guardianship of a child is sought, as well as child support for the child, the application for child support shall be filed in the guardianship proceeding.

Guardianship where child already subject of child protection proceedings

70.03(5) If guardianship is sought of a child who is the subject of an existing child protection proceeding or an existing child protection order

(a) the application for guardianship shall be filed in the child protection proceeding in accordance with subrule (6); and

(b) the title of proceeding shall be amended to name all parties.

When leave required for guardianship application

70.03(6) An application for guardianship under subrule (5) may be filed in the child protection proceeding

(a) without leave of the court at any time before setting a trial date; or

(b) with leave of the court after setting a trial date.

- Sources:
- *Community Legal Education Association, Winnipeg, Mb.*
 - *Manitoba Parent Zone/Healthy Child Manitoba; www.manitobaparentzone.ca*