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BCLI Report no. 30—Report on Appointing a Guardian and Standby Guardianship

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Parents and other guardians of small children want to feel secure in the knowledge that if they become unable to care for their children, through death or otherwise, their children's care will be provided for through a process that is both timely and certain.

This report explores four issues related to the guardianship of children. The first issue addressed is whether provisions relating to testamentary guardianship, that is guardianship appointed by will or deed, belong in the *Family Relations Act*. While the *Family Relations Act* generally governs guardianship issues in British Columbia, the law regarding testamentary guardians is provided for in section 50 of the *Infants Act*. The report recommends that the testamentary guardianship provisions be relocated to the *Family Relations Act*.

The second issue addressed in this report is 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 in their will or deed. Under section 50 of the *Infants Act* a parent is the only category of guardian who can appoint a testamentary guardian. The report concludes that a guardian other than a parent should also be able to appoint a person to act as guardian of the child after the appointing guardian's death.

Third, the question is raised 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. Standby guardianship refers to the appointment of a guardian that only takes effect on the occurrence of some future triggering event. In particular, a guardian might want to appoint another person to share guardianship during a period of illness or incapacity. The report determines that the *Family Relations Act* be amended to allow for the appointment of a standby guardian.

The final issue discussed is whether a "simple form" should be created for the appointment of a guardian outside of a formal will or deed. The report determines that indeed such a form is preferable and should be enacted through regulation under the *Family Relations Act*.

The recommendations in this report endeavor to make the appointment of guardians accessible to more families by simplifying the appointment process, and expanding the category of persons who can appoint a guardian to include guardians who are not parents.