

LAW REFORM COMMISSION OF BRITISH COLUMBIA

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Backgrounder

LRC 78—Report on the Authority of a Guardian

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When parents are unable or unfit to care for a child, a non-parental guardian may be appointed to serve in their place. This appointment may be made either by will or through a court order. There are two kinds of guardianship. A person may be a guardian of the person of the child or the guardian of the estate of the child or both.

The powers of a guardian are set out in the *Family Relations Act*. This piece of legislation has attracted criticism in relation to its coverage of guardian issues. In particular, the Act says very little concerning the rights, duties, and powers of a guardian. Instead it refers readers to an old English statute, the *Tenures Abolition Act, 1660*. In short, the Act is unhelpful.

The report considers the options for replacing the existing legislation with a more modern statute. It notes that in some commonwealth jurisdictions there has been a tendency to define powers of guardians in general terms. In other jurisdictions, such as Texas, the powers and duties of a guardian are defined more comprehensively. The conclusion reached by the Law Reform Commission is that the existing legislation in British Columbia dealing with the powers and duties of a guardian should be repealed.

As regards a guardian of the person of a child the report does not recommend detailed legislation defining their powers and duties. It suggests that the authority of a guardian be defined by a general statement of principle providing that a guardian should have all of the authority over a child enjoyed by the child's parents.

As for guardianship of the estate of a child, the commission believes that there is merit in retaining the current supervisory role of the court (usually at the instance of the Public Trustee). However, there will be circumstances where the guardian should have capacity to act without court approval, primarily where small amounts of the child's money are involved. The committee does not believe that it is necessary to define the specific powers and duties of guardianship of a child's estate. A guardian is effectively the child's fiduciary and as such should be subject to the rules that govern trustees.

Further Developments

See *Miscellaneous Statutes Amendment Act (No. 1), 1987*, S.B.C. 1987, c. 42, ss. 21–22 (repealed: *Supplements Repeal Act*, S.B.C. 2006, c. 33, s. 1).