



The Infants Estate Act by Doug Paterson, Q.C.

Sometimes children (under the age of 18 years) need someone of authority to be in charge of their assets and business affairs.

It may be due to having unsuitable parents or guardians where a large sum of money or valuable property comes to be owned by a child. This could be money earned by a child entertainer, or perhaps obtained through an inheritance.

If an Application is made to the Court of Queen's Bench, both or only one parent may be appointed as guardian of the child's estate, or with the consent of the parents, some other suitable person may be appointed instead. This could be a close family friend, or a relative, or a trust company, or Manitoba's Public Trustee.

If the child applies, or some other person interested in the child's welfare, the Court may dispense with parental consent altogether.

If we have a situation where no parents or guardians exist, then the infant or person interested in his or her welfare may apply to

have a suitable person appointed as guardian but only after advertising this request twice in a local paper and the Court approves of a report from a Child and Family agency. No such report is needed if the guardian appointed is a trust company or Public Trustee of Manitoba.

For a private person to be appointed guardian, a fidelity bond will likely be needed with sureties (guarantors) as well.

Guardians are trustees and must follow the rules of faithfulness and loyalty, honesty and accountability.

Once the guardianship is ended, the property must be delivered up with no delay and with only reasonable expenses and charges deducted (after Court approval).

If the appointed guardian proves to be unsuitable, he or she may be removed because of a breach of trust or "any proper cause". This gives the presiding Justice very wide discretion.

Guardians normally manage real estate assets, the personal possessions, any Court proceedings, and the usual cost of living aspects required to have the infant thrive. Deciding on educational issues and paying for same are major aspects of a guardian's work. Investing would be another.

It would be improper for the guardian to make decisions indirectly benefiting the guardian! The Court would not be happy if a guardian decided to take the child to Hawaii every winter for 4 months and pay for it from the child's account!

If the value of the infant's estate is less than \$10,000.00, the Court may allow the guardian more control and to control the estate in a summary way without a lot of Court involvement.