



# Taking care of your children: Guardianship

## John and Linda's children

John and Linda Sutton (not their real names) of Vancouver were 40 and 41 years old. They had three children: 8, 11 and 14. Two years ago, John and Linda left the children with friends and went on a weekend skiing trip to Whistler, B.C. On the road, they were both killed in a head-on crash.

John and Linda had a will and had named Linda's parents as guardians. Unfortunately, Linda's parents were not as spry as they'd been when the will had been drafted eight years earlier. It was agonizing for the grandparents as they worried about their options. The only close relative lived in Chicago, and they didn't want to move the children so far away. They thought about foster care, but couldn't bring themselves to follow through on that option. The children, distraught with the loss of their parents, and old enough to sense the dilemma that was taking place, were getting out of control.

To help the family cope, the grandparents hired a housekeeper to assist with raising the children. While this dealt with some issues in the short term, it came at a substantial financial cost. In the interim, the grandparents continued to worry about their own health and whether or not they would be around to care for their grandchildren through to adulthood.

## Choosing a guardian

Difficult as it is, you need to take action and have plans just in case the unthinkable happens. It takes time and thought to choose the right guardian for your children.

Here are some questions to ask yourself:

- Does he or she share your religion, child-rearing values and lifestyle ideals? Nobody will think exactly like you on all matters, but you need to choose someone with similar values
- If you're considering choosing your parents, are they physically well enough to take the job on? Will they have the energy to raise young children, and are they young enough to undertake this responsibility until your children reach the age of majority?
- If you're considering a friend over a family member, how will your family feel? Will you need to help your family understand the decision in advance to reduce the possibility of disagreement after you are gone? This will help lessen the likelihood of your decision being challenged in court

Making a decision about who should raise your children in the event that something happens to you is not easy. It means thinking about your death and the possibility of not being around to watch them grow up – missing their first day of school, first date, graduation or wedding day. Difficult as it is, you need to nominate a guardian for your children. Guardianship ensures that arrangements are in place to best fulfill your children's custodial needs.





- Would you want this person to serve as the guardian of your children's inheritance? Are you confident that he or she could do so? (Refer to the section on financial considerations)
- If you have several children, is it realistic to expect one person to act as guardian? If you're considering naming more than one guardian, will the nominees get along? Will they work together to keep the children as close as possible?
- Would the individual be objective and have the best interests of the children at heart? For instance, would he or she ensure your family remains actively involved in your children's lives?
- If children are old enough, should you ask them with whom they would like to live? There are different opinions. Only you know how your children will respond. Some experts recommend against it; as parents, you have the right to determine who is best to raise them. Keep in mind, however, that you cannot be certain the person your child may choose will be appropriate or agree to act as guardian
- If your family now includes children from previous relationships, review and coordinate the guardianship appointments you and your new partner have made. Some couples have never changed named guardians, and this can result in an unexpected, but forced, separation of the children. If your decision is to separate the children, then it's even more important to make sure the children are aware and understand your decision
- Complete the *Choosing a Guardian* worksheet

## Legal considerations

While the actual guardianship appointment and details should be discussed with a lawyer, here are some things to think about:

- If guardianship could become an issue, write a memorandum or letter – dated and signed – that explains your reasons for appointing a particular guardian. The same letter could set out your wishes concerning religion and schooling
- Keep in mind there is always the possibility that a court may choose to ignore your appointment if it feels the appointment is not in the best interest of the child
- Legislation governing the guardianship of children varies from province to province. Consult with a lawyer for the legislation that applies in your province

Recent changes to the *Income Tax Act* (Canada) regarding children as beneficiaries of registered plans (RRSPs or RRIFs) can minimize taxes payable in the final return of a parent or grandparent. Speak to your advisor for more information.



## Financial considerations

Making the appropriate financial arrangements will ensure that you don't leave the costs up to your children's guardian and will allow your children to have the lives you want for them.

- Consider investing in a mutual fund, registered education savings plan (RESP) and/or an in-trust account for your children
- You can also add a clause to your will that allows for a loan from the child's inheritance to be made to the guardian, if necessary, to ease the financial burden
- If you designate your child as the beneficiary of your RRSP or life insurance policy, the funds will likely be under the control of a court official until the child reaches the age of majority. The same would happen if you die intestate (without a will) while your child is under the age of majority. It is wise to consult your lawyer to ensure that the inheritance you leave for your children will remain intact and be available when they need it

## Asking the question

Now that you've chosen a guardian for your children, raising the issue doesn't have to be difficult.

- First, be prepared for the person you have chosen not to accept. Remember, this is a significant responsibility
- One way to approach the chosen guardian would be: "I've been working on my will and one of the things I've been thinking about is a guardian for the children. I would be very honoured if you would consider accepting this responsibility. We don't have to talk about it in detail right now – maybe you'd like to think about it and get back to me, and then we could have a more in-depth discussion."
- The follow-up meeting will depend on the outcome of the first meeting. Some people will agree with the described approach, while others will want to have all the information before thinking about it. Either way, at some point you will need to discuss the values you believe are essential in raising a child
- Review your *Choosing a Guardian* worksheet together

The proper legal term for the person who receives custody of a child after the death of his or her parents is a "custodian." In a will or any legal document, the word "custodian" is used to denote the person who has received custody of the child. However, "guardian" is the term that is commonly used.



## You've chosen a guardian, now what?

- Describe your wishes in your estate plan. A lawyer will ensure your wishes are recorded accurately
- Talk to your advisor about how to incorporate savings for your children into your financial plan or set up a trust. Registered education savings plans and in-trust accounts are investment options that can help you create a solid financial future for them
- Nothing stays the same: Check with the proposed guardian to ensure that he or she continues to be able and willing to undertake the responsibility
- As the children get older, speak with them to ensure they are content with your choice of guardian. Remember, a guardian chosen for young children may not necessarily be the right person for teenagers

## A word to the guardian

- Do you fully understand the legal and financial responsibilities of being a guardian? If not, ask the parents exactly what will be expected of you and the provisions being made in their estate for such an eventuality
- Will you be a financial guardian of the children's inheritance? If so, what will your role be and do you feel qualified to carry it out?
- How would your family feel about sharing their household? Discuss your decision with them and make sure everyone understands what this obligation means. Be sure that they would welcome children into your home, and not consider them as outsiders
- Do you share the values of the children's parents? Would you be willing to raise their children according to their wishes? Rearing your own children as well as someone else's under two different sets of rules and ideals could be challenging
- Would your lifestyle be affected by becoming a guardian? For instance, if your own children are grown, are you prepared to take on younger children? Are the children's parents planning ahead for the costs of rearing them or will you be financially burdened?
- Can you accept and raise these children like your own – even through the difficult years, like adolescence?



## No time like the present

It's so easy to put off doing what we don't want to think about. But now that you have this information, we urge you to take action and get your affairs in order.

## Experts consulted

**Nelson Blackburn, Q.C.**, an estate lawyer with Blackburn English, Bedford, N.S.

**Rhonda Katz**, family therapist, Toronto

**Anne-Marie McLauchlan**, an estate lawyer with Dale and Lessmann, Toronto

For more information about this topic, contact your advisor, call us at **1.800.874.6275** or visit our website at **[www.aimtrimark.com](http://www.aimtrimark.com)**

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