

Métis Child, Family and Community Services v CPR et al,
2023 MBCA 82.

SUMMARY

This case is an appeal of an order granting guardianship of A.D.R. to D.D. (the former partner of A.D.R.’s deceased father, S.J.M.) rather than A.D.M. (A.D.R.’s paternal aunt), in competing guardianship applications. A.D.M. argues that the trial judge erred in finding that the Federal Act does not apply to private guardianship applications. Peguis Child and Family Services [“Peguis CFS”] intervenes to argue that it does apply. A.D.M. also argues that the trial judge erred: (1) in his application of the values and principles underlying [*An Act respecting First Nations, Inuit and Métis children, youth and families*](#) [“the Federal Act”]; (2) in his finding of facts and the weight he attributed to them; and (3) by failing to give sufficient weight to the evidence regarding A.D.R.’s views. A.D.M. wants to admit fresh evidence. The Court found that the trial judge did not err in his decision. The Court dismissed the motion to admit fresh evidence and found that a variation proceeding was more appropriate. Appeal dismissed.

JURISDICTION	Manitoba
COURT	Manitoba Court of Appeal
JUDGE	Cameron JA
PARTIES	Appellant(s) 1. A.D.M. Paternal Aunt Respondent(s) 1. D.D. Former Stepmother and Guardianship Applicant 2. Metis Child, Family and Community Services [“MCFCS”] 3. C.P.R. Mother 4. S.J.M. Father (Deceased) Intervener 1. Peguis Child and Family Services [“Peguis CFS”]
TREATY TERRITORY	Treaty 1
INDIGENOUS GROUP, COMMUNITY, OR PEOPLE	Peguis First Nation
APPLICABLE INDIGENOUS LAW	<i>Honouring Our Children, Families and Nation Act.</i>

TOPICS	Best interests of the child Private guardianship
LEGISLATION CITED	<u><i>An Act respecting Child and Family Services (Indigenous Jurisdiction and Related Amendments)</i>, SM 2023, c 26.</u> <u><i>An Act respecting First Nations, Inuit and Métis children, youth and families</i>, SC 2019, c 24.</u> Sections 9; 10; 16 <u><i>Child, Youth and Family Enhancement Act</i>, RSA 2000, c C-12.</u> <u><i>The Child and Family Services Act</i>, CCSM c C80.</u> Sections 2; 2.1(5)(f); 75(2). <u><i>The Child and Family Services Amendment Act</i>, SM 2022, c 30.</u> <u><i>The Family Law Act</i>, CCSM c F20.</u> Sections 35; 48 <u><i>The Family Law Act, The Family Support Enforcement Act and the Inter-Jurisdictional Support Orders Amendment Act</i>, SM 2022, c 15.</u> Section 106(3).
CASE LAW CONSIDERED	<u><i>Barendregt v Grebliunas</i>, 2022 SCC 22.</u> <u><i>BJT v JD</i>, 2022 SCC 24.</u> <u><i>Palmer v The Queen</i>, [1980] 1 SCR 759.</u> <u><i>Stevens v Haley</i>, 2019 MBCA 88.</u> <u><i>Van de Perre v Edwards</i>, 2001 SCC 60.</u>
CASE HISTORY	<u><i>Métis Child, Family and Community Services v CPR et al</i>, 2-23 MBCA 82.</u> <u><i>Métis Child, Family and Community Services v CPR et al</i>, 2022 MBCA 40.</u> <u><i>Métis Child, Family and Community Services v CPR</i>, 2021 MBQB 228.</u>

CASE BRIEF

DECISION

- Dismiss the motion for fresh evidence and the appeal.
- The applicability of the *Federal Act* should not be determined in this case.
- The trial judge did not err in his application of the fundamental values and principles underlying the *Federal Act* in reaching his conclusion regarding A.D.R.'s best interests.
- The trial judge did not err in his findings of fact or in the inferences he drew.
 - These findings and inferences are entitled to deference.
- The trial judge did not err in the weight that he placed on A.D.R.'s wishes.
- Given the trial judge did not make material errors, a variation proceeding is more appropriate, and the additional evidence is not admissible in this appeal.

FACTS

- A.D.R. is the child in this matter.
 - S.J.M. is A.D.R.'s deceased father.
 - C.P.R. is A.D.R.'s mother and does not wish to care for her.
 - A.D.M., the child's paternal aunt and sister of S.J.M., lives in British Columbia (since 2017), previously helped care for A.D.R., is a Peguis First Nation member with status, and applied for guardianship in January 2021.
 - D.D. is the guardianship applicant and was in a relationship with S.J.M. before his relationship with C.P.R., and before A.D.R. was born.
- D.D. and S.J.M. have a child, K. She is A.D.R.'s adult half-sister.
- D.D. and S.J.M. maintained a relationship post-breakup. D.D. cared for A.D.R. periodically.
- In 2014, S.J.M. was in a relationship with C.K., who also cared for A.D.R. periodically.
- S.J.M. and C.K. had a daughter in 2015, M.M. She is A.D.R.'s younger half-sister.
- Between 2014 and 2018, A.D.R. was in and out of S.J.M.'s care. S.J.M. suffered from addiction issues.
- For four months, until January 2018, D.D. cared for A.D.R., enrolled her in school, and she lived with D.D. and K.
- S.J.M. requested her return; A.D.R. was apprehended from S.J.M.'s care in September 2018 and was placed with K. This allowed D.D. to spend time with her as well.

- S.J.M. died by suicide in April 2019.
- A.D.R. stopped living with K. when MCFCS supported C.P.R. in reunification. Reunification was unsuccessful and A.D.R. was apprehended in September 2019.
- A.D.R. was then placed with C.K. She lived with C.K. and M.M. D.D. and K provided respite.
- C.K. was unable to manage A.D.R.'s behavioural challenges; A.D.R. suffers from encopresis (fecal incontinence) linked to emotional distress.
- In January 2021, MCFCS placed A.D.R. in D.D.'s care on a short-term basis. A.D.R. did well; continued therapy and began seeing a specialist for her encopresis.
- Issues arose when D.D. missed planned video calls between A.D.R. and A.D.M. Also, visitation issues between A.D.R and M.M.
- MCFCS had to facilitate calls and visits.
- In February 2021, A.D.M. provided a safe home assessment supporting her as a temporary placement in British Columbia, but MCFCS determined that it would be in A.D.R.'s best interests to stay with D.D. and complete the school year.
- In a subsequent meeting in March 2021, MCFCS requested a comparative guardianship assessment between D.D. and A.D.M. but A.D.M. refused to participate stating her safe home study was sufficient.
- In July 2021, A.D.R. visited A.D.M. and her family in British Columbia for one month. She then returned to live with D.D.

ISSUES

1. Did the trial judge err in failing to apply the *Federal Act*?
2. Did the trial judge err by failing to give adequate weight to the foundations, objectives, intent and the overarching principles of the *Federal Act* and of the United Nations Declaration on the Rights of Indigenous Peoples Act, SC 2021, c 14?
3. Did the trial judge err by making erroneous and arbitrary assumptions or draw conclusions not supported by the facts?
4. Did the trial judge err by failing to give sufficient weight to the evidence presented regarding the views of the child or to take additional steps to ascertain them?

ANALYSIS

Issue 1: Did the trial judge err in failing to apply the *Federal Act*?

- The Court finds that the trial judge *did not* err in failing to apply the *Federal Act*.
- It would not be in the best interests of A.D.R. to have the matter decided on the arguments made at this hearing.
- Constitutional arguments regarding jurisdiction and application of the *Federal Act* must be considered in the determination of its applicability to private guardianship applications made pursuant to the [Child and Family Services Act](#) [“CFSA”].
- Legislative history: comments arose in the Senate that would indicate concern that the Federal Act would not apply to private guardianship.
- Amendments to CFSA & enactment of the [Family Law Act](#) [“the FLA”]:
 - Part VII (Private Guardianship of the Person and Access), which includes section 77 of the CFSA, was repealed on July 1, 2023 (see [The Child and Family Services Amendment Act](#)).
- Private guardianships in Manitoba are no longer governed by the CFSA. They are now governed by Part 3 of the FLA (see section 48). Section 35 of the FLA contains the best interests of the child provision and the factors to be considered.

Issue 2: Did the trial judge err by failing to give adequate weight to the foundations, objectives, intent and the overarching principles of the *Federal Act* and of the United Nations Declaration on the Rights of Indigenous Peoples Act, SC 2021, c 14?

- The Court finds that the trial judge *did not* err in this regard.
- The trial judge made no material errors in assessing the evidence or applying the principles of the Federal Act.
- Any misstatement of MCFCS’s position was minor and nonprejudicial.
- The judge reasonably evaluated evidence on family contact, cultural plans, guardianship assessments, and party preferences, and was entitled to weigh them as he did.
- Cultural and family connections were considered and reflected in the guardianship conditions.

Issue 3: Did the trial judge err by making erroneous and arbitrary assumptions, or draw conclusions not supported by the facts?

- The Court finds that the trial judge did not make any erroneous or arbitrary assumptions, nor did they draw any conclusions not supported by the facts.
- A.D.M. has not demonstrated palpable and overriding error in the findings of fact made by the trial judge or in the inferences that he drew.
 - These findings of fact and inferences are entitled to deference.
- D.D. testified at the trial that A.D.R.'s conditions were improving. The trial judge was entitled to accept this evidence without requiring independent evidence.
- The trial judge did not err in his findings about A.D.M.'s level of contact with A.D.R.
 - The judge did not deny that contact occurred but doubted the extent claimed after 2014, a conclusion he was entitled to reach.
- C.K.'s evidence did not clearly establish the timing of visits, and the judge acknowledged A.D.M.'s later in-person and remote contact, including several days together in 2020.

Issue 4: Did the trial judge err by failing to give sufficient weight to the evidence presented regarding the views of the child or to take additional steps to ascertain them?

- The Court finds that the trial judge made no errors in his weighing of the evidence.
- Section 2.1(5)(f) of the CFSA mandates that, in considering the best interests of the child, "the child's views and preferences should be given due weight according to their age and maturity, unless they cannot be ascertained".
 - This was one factor to be considered in determining the best interests of A.D.R.
- Trial amicus was appointed for A.D.R. The trial judge noted A.D.R.'s emotional and behavioral challenges, and that he did not believe that her expressed preference between the two applicants should be emphasized.
 - Trial Amicus is appointed in a matter to assist a court (usually by providing legal arguments), and does not represent any party directly.
- A.D.R.'s social worker testified that, over the course of their meetings, A.D.R. expressed:
 - (1) preference to live with A.D.M.;
 - (2) she would be happy living at both places; and
 - (3) worry that the social worker would tell D.D. that she wants to live with A.D.M., and that D.D. would get mad at her.

- The trial judge discounted the weight of the evidence.
 - Weight given to the child's evidence is discretionary, and highly dependent on the child vulnerability, capacity, etc.
- Amicus brought a motion to introduce fresh evidence relying on *Palmer v The Queen*, [1980] 1 SCR 759 [Palmer].
 - The proposed fresh evidence consists of an affidavit by an articling student who observed a conversation between amicus and A.D.R. in which A.D.R. expressed desire to live with A.D.M.
- The Court says that the evidence as to where A.D.R. wishes to live is consistent with the evidence heard at trial. This is not new.
 - However, there has been significant developments since the trial; this bears upon the findings that the trial judge made at the time
- The additional proposed evidence would indicate that:
 - (1) visits with M.M. haven't occurred;
 - (2) A.D.R. is no longer in therapy; and
 - (3) A.D.R. is not connected with her Indigenous community since being in D.D.'s care.
- Despite this, the Court finds that a variation proceeding is more appropriate.
 - A variation proceeding will allow the trial judge to ask questions, clarify and verify the statements of A.D.R., as well as any evidence that D.D. or A.D.M. might present in response to the application.
 - These are all things that are suited to a first instance judge, as opposed to appellate review.

RELEVANT EXCERPTS

[43] In response to A.D.M.'s submission regarding the federal Act, the trial judge referred to a number of provisions in it, including the best interests of Indigenous children, representations from Indigenous governing bodies and priority of placement in the context of providing child and family services (see para 25). He noted that he was not called upon to answer the question of the applicability of the federal Act in this case, but that he doubted whether it applied to a private guardianship application made under [section 77](#) of the [CFSA](#). Nonetheless, when the issue arose during oral argument, he stated that it was his view that the underlying values and core principles giving priority and attaching value to the child's cultural heritage were embedded in the CFSA and that he would pay heed to them.

[44] In considering the best interests of the child, he stated that, in light of A.D.R.'s age and behavioural and emotional challenges, he did not place emphasis on her expressions of preference as between A.D.M. and D.D. A.D.R. had expressed a preference to reside with A.D.M. at various times to her social worker (the social worker), although she did state to amicus counsel appointed to represent her best interests at the trial (trial amicus) (not the same amicus as in the appeal) that she had no preference.

[45] Regarding A.D.R.'s culture and community, he referred to the letter provided by Peguis FN. He reviewed A.D.M.'s connection to it, noting that she had not visited the community since moving to British Columbia and that it was unclear when she last visited it before that. He reviewed D.D.'s Indigenous heritage and her support of A.D.R. participating in a Metis day camp and involvement in Indigenous cultural programming at her school. He concluded that the evidence of culture and community did not command the result in A.D.M.'s favour, particularly in light of the move of A.D.R. to British Columbia being at the core of A.D.M.'s plan.

[54] A.D.M. argues that the federal Act was designed to address the intergenerational harms occasioned by child welfare systems that failed to recognize the importance of culture, identity, community and extended family, and that it should not be interpreted in a narrow fashion. She argues that the Declaration of Principles and the definition of "best interests" in [section 2\(1\)](#) of the [CFSA](#) are not as inclusive as the "best interests of [an] Indigenous child" as defined in section 10 of the federal Act, and that there is no priority of placement of an Indigenous child as found in section

16 of the federal Act. These sections of the federal Act (as well as section 9) have been added as Appendix B to these reasons.

[55] A.D.M. acknowledges the Alberta cases of PPM (Re), [2020 ABPC 243](#) [PPM]; and SL v Alberta (Child, Youth and Family Enhancement Act, Director), [2021 ABPC 202](#) [SL]. In PPM, Ho J determined that the term “child and family services” in the federal Act refers to “services provided by government to assist families to protect the well-being of children” (at para 14) and not to private guardianship applications under the [Family Law Act](#), SA 2003, c F-4.5, including when the children are in the care of the respondent director under permanent guardianship (see paras 14-16). Similarly, in SL at para [6](#), he determined that the federal Act had no application to private guardianship applications made pursuant to [Alberta’s](#) Child, Youth and Family Enhancement Act, RSA 2000, c C-12 [the CYFEA].

[59] In support of its argument, Peguis CFS refers to additional case law in Alberta wherein the Court allowed First Nations the right to participate and/or make submissions in private guardianship applications. In those cases, the Court either relied on the federal Act in support of its interpretation of the [CYFEA](#) (see MM v Alberta (Child, Youth and Family Enhancement Act, Director), [2021 ABPC 317](#) at paras [15-37](#)) or indicated that the CYFEA must be read together with the federal Act (see RAB (Re), [2020 ABPC 75](#) at para [24\(e\)](#)).

[60] In addition, Peguis CFS refers to SK v Alberta (Child, Youth and Family Enhancement Act, Director), [2022 ABPC 144](#) at paras [18–19](#), which disagrees with previous decisions that the federal Act does not apply to private guardianship matters in Alberta.

[61] Finally, Peguis CFS refers to the Manitoba cases of Michif CFS v CLH and WJB, [2020 MBQB 99](#) at paras [26-32](#) [CLH]; and Island Lake First Nations Family Services v GJF and LJMB et al, [2022 MBQB 135](#) at paras [27-29](#), wherein the Court applied the federal Act when considering private guardianship orders. See also CFS Western MB v MLK and TDR, [2022 MBQB 106](#) at paras [18-20](#).

[62] D.D. relies on the Alberta cases of PPM and SL, stating that the federal Act is only applicable to services provided by the Government to assist families and not to private guardianship applications.

[63] MCFCS takes no position regarding the application of the Federal Act.

LEGISLATION CITED

An Act respecting Child and Family Services (Indigenous Jurisdiction and Related Amendments), SM 2023, c 26.

An Act respecting First Nations, Inuit and Métis children, youth and families, SC 2019, c 24.

Section 9

Principle — best interests of child

9 (1) This Act is to be interpreted and administered in accordance with the principle of the best interests of the child.

Principle — cultural continuity

(2) This Act is to be interpreted and administered in accordance with the principle of cultural continuity as reflected in the following concepts:

(a) cultural continuity is essential to the well-being of a child, a family and an Indigenous group, community or people;

(b) the transmission of the languages, cultures, practices, customs, traditions, ceremonies and knowledge of Indigenous peoples is integral to cultural continuity;

(c) a child's best interests are often promoted when the child resides with members of his or her family and the culture of the Indigenous group, community or people to which he or she belongs is respected;

(d) child and family services provided in relation to an Indigenous child are to be provided in a manner that does not contribute to the assimilation of the Indigenous group, community or people to which the child belongs or to the destruction of the culture of that Indigenous group, community or people; and

(e) the characteristics and challenges of the region in which a child, a family or an Indigenous group, community or people is located are to be considered.

Principle — substantive equality

(3) This Act is to be interpreted and administered in accordance with the principle of substantive equality as reflected in the following concepts:

(a) the rights and distinct needs of a child with a disability are to be considered in order to promote the child's participation, to the same extent as other children, in the activities of his or her family or the Indigenous group, community or people to which he or she belongs;

(b) a child must be able to exercise his or her rights under this Act, including the right to have his or her views and preferences considered in decisions that affect him or her, and he or she must be able to do so without discrimination, including discrimination based on sex or gender identity or expression;

(c) a child's family member must be able to exercise his or her rights under this Act, including the right to have his or her views and preferences considered in decisions that affect him or her, and he or she must be able to do so without discrimination, including discrimination based on sex or gender identity or expression;

(d) the Indigenous governing body acting on behalf of the Indigenous group, community or people to which a child belongs must be able to exercise without discrimination the rights of the Indigenous group, community or people under this Act, including the right to have the views and preferences of the Indigenous group, community or people considered in decisions that affect that Indigenous group, community or people; and

(e) in order to promote substantive equality between Indigenous children and other children, a jurisdictional dispute must not result in a gap in the child and family services that are provided in relation to Indigenous children.

Section 10

Best interests of Indigenous child

10 (1) The best interests of the child must be a primary consideration in the making of decisions or the taking of actions in the context of the provision of child and family services in relation to an

Indigenous child and, in the case of decisions or actions related to child apprehension, the best interests of the child must be the paramount consideration.

Primary consideration

(2) When the factors referred to in subsection (3) are being considered, primary consideration must be given to the child's physical, emotional and psychological safety, security and well-being, as well as to the importance, for that child, of having an ongoing relationship with his or her family and with the Indigenous group, community or people to which he or she belongs and of preserving the child's connections to his or her culture.

Factors to be considered

(3) To determine the best interests of an Indigenous child, all factors related to the circumstances of the child must be considered, including

- (a) the child's cultural, linguistic, religious and spiritual upbringing and heritage;
- (b) the child's needs, given the child's age and stage of development, such as the child's need for stability;
- (c) the nature and strength of the child's relationship with his or her parent, the care provider and any member of his or her family who plays an important role in his or her life;
- (d) the importance to the child of preserving the child's cultural identity and connections to the language and territory of the Indigenous group, community or people to which the child belongs;
- (e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
- (f) any plans for the child's care, including care in accordance with the customs or traditions of the Indigenous group, community or people to which the child belongs;

(g) any family violence and its impact on the child, including whether the child is directly or indirectly exposed to the family violence as well as the physical, emotional and psychological harm or risk of harm to the child; and

(h) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

Consistency

(4) Subsections (1) to (3) are to be construed in relation to an Indigenous child, to the extent that it is possible to do so, in a manner that is consistent with a provision of a law of the Indigenous group, community or people to which the child belongs.

Section 16

Priority

16 (1) The placement of an Indigenous child in the context of providing child and family services in relation to the child, to the extent that it is consistent with the best interests of the child, is to occur in the following order of priority:

(a) with one of the child's parents;

(b) with another adult member of the child's family;

(c) with an adult who belongs to the same Indigenous group, community or people as the child;

(d) with an adult who belongs to an Indigenous group, community or people other than the one to which the child belongs; or

(e) with any other adult.

Placement with or near other children

(2) When the order of priority set out in subsection (1) is being applied, the possibility of placing the child with or near children who have the same parent as the child, or who are otherwise members of

the child's family, must be considered in the determination of whether a placement would be consistent with the best interests of the child.

Customs and traditions

(2.1) The placement of a child under subsection (1) must take into account the customs and traditions of Indigenous peoples such as with regards to customary adoption.

Family unity

(3) In the context of providing child and family services in relation to an Indigenous child, there must be a reassessment, conducted on a ongoing basis, of whether it would be appropriate to place the child with

(a) a person referred to in paragraph (1)(a), if the child does not reside with such a person; or

(b) a person referred to in paragraph (1)(b), if the child does not reside with such a person and unless the child resides with a person referred to in paragraph (1)(a).

[Child, Youth and Family Enhancement Act, RSA 2000, c C-12.](#)

[The Child and Family Services Act, CCSM c C80.](#)

Section 2

Purpose of Act

2 The purpose of this Act is to support the safety, security and well-being of children through the provision of services that are designed to preserve, sustain and restore families in the least disruptive manner possible.

Section 2.1(5)(f)

Other factors for consideration

2.1(5) When the best interests of a child are being considered, all factors related to the circumstances of the child must be considered, including

(f) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;

Section 75(2)

Reporting not to identify persons involved

75(2) No press, radio or television report of a proceeding under Part II or III shall disclose the name of any person involved in the proceedings as a party or a witness or disclose any information likely to identify any such person.

[*The Child and Family Services Amendment Act, SM 2022, c 30.*](#)

[*The Family Law Act, CCSM c F20.*](#)

Section 35

Best interests of the child

35(1) The court must only consider the best interests of the child in making a parenting order, a contact order or a guardianship order.

Primary consideration

35(2) When considering the factors referred to in subsection (3), the court must give primary consideration to the child's physical, emotional and psychological safety, security and well-being.

Factors to be considered

35(3) In determining the best interests of a child, the court must consider all of the factors related to the child's circumstances, including the following:

(a) the child's needs, given the child's age and stage of development, such as the child's need for stability;

(b) the nature and strength of the child's relationship with each person who has or is seeking parental responsibilities or contact with the child or who is a guardian or seeks

guardianship of the child, as well as with siblings, grandparents and any other person who plays an important role in the child's life;

(c) the willingness of each person seeking parental responsibilities, guardianship or contact with the child to support the development and maintenance of the child's relationship with other persons to whom the order would apply;

(d) the history of care of the child;

(e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;

(f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;

(g) any plan for the child's care;

(h) the ability and willingness of each person in respect of whom the order is to apply to care for and meet the needs of the child;

(i) the ability and willingness of each person in respect of whom the order is to apply to communicate and cooperate, in particular with one another, on matters affecting the child;

(j) any family violence and its impact on, among other things,

(i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and

(ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on matters affecting the child;

(k) any civil or criminal proceeding, order, condition or measure that is relevant to the safety, security and well-being of the child.

Factors relating to family violence

35(4) In considering the impact of any family violence under clause (3)(j), the court must take the following into account:

- (a) the nature, seriousness and frequency of the family violence and when it occurred;
- (b) whether there is a pattern of coercive and controlling behaviour in relation to a family member;
- (c) whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence;
- (d) the physical, emotional and psychological harm or risk of harm to the child;
- (e) any compromise to the safety of the child or other family member;
- (f) whether the family violence causes the child or other family member to fear for their own safety or for that of another person;
- (g) any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve their ability to care for and meet the needs of the child;
- (h) any other relevant factor.

Past conduct

35(5) In determining what is in a child's best interests, the court must not consider the past conduct of any person unless the conduct is relevant to their exercise of parental responsibilities, their responsibilities under a guardianship order or their contact with the child.

Interim and variation orders

35(6) This section also applies when the court is making an interim or variation order.

Section 48

Guardianship Order

48(1) On application by a person who is neither a parent nor a person who stands in the place of a parent, the court may appoint the applicant as guardian of the person of a child.

Notice

48(2) A guardianship order must not be made unless the person applying for the order has given notice of the time, date and place of the hearing of the application in accordance with the regulations.

No application for order if pending adoption

48(3) If a child has been placed for adoption, no application may be made for a guardianship order until an order of adoption is made or the placement is otherwise terminated.

Effect of order

48(4) When a guardianship order is made, the applicant is for all purposes the guardian of the person of the child and has parental responsibilities respecting the child and is responsible for the child's support and well-being.

Order to remove guardian

48(5) On application by a parent, guardian or person standing in the place of a parent, the court may remove a guardian appointed under this section, with or without appointing another guardian.

[The Family Law Act, The Family Support Enforcement Act and the Inter-Jurisdictional Support Orders Amendment Act, SM 2022, c 15.](#)

Section 106(3)

106(3) (*Private Guardianship of the Person and Access*) is repealed.