

Estate Essentials: Ensuring Care of Minor Children with a Will

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By Lori Isaj

Although every adult Canadian should have a will, it is common that people do not turn their minds to their estate planning until they become parents. For many, having the first child is the first life event significant enough to consider putting their affairs in order and ensuring that the child is looked after. This is often when new parents consider preparing a will to appoint people who will look after the child's care and financial support.

In Ontario, the *Children's Law Reform Act* addresses custody and guardianship under a will. The *Children's Law Reform Act* provides that a person (usually a parent) entitled to decision-making responsibility, commonly referred to as custody, may appoint by will one or more persons to have decision-making responsibility and/or become guardians of the child's property after the death of the parent.

Appointing a person(s) for decision-making responsibility can be a challenging task that can stall the estate planning process. However, the importance of such decision should not delay finalizing the will. The appointment under a will is only valid for 90 days after the last parent dies, a fact that often surprises people. After the expiration of the 90 days from the parents' death or the last parent to die, the named individual(s) must apply to the court for permanent appointment of decision-making responsibility and/or guardianship of the child's property. The reason is that the legal test the court must consider is what is in the "best interests of the child." However, the provisions of the will are important for numerous reasons:

First, they cover the immediate appointment to ensure that the child is looked after following the loss of the parents.

Second, the provisions of the will also serve as evidence of the parents' wishes for the court to consider for the permanent appointment.

Third, a will can allow the parents to specify the decision-makers with respect to day-to-day care, education, religion, culture, extra-curricular activities, and general upbringing while also specifying the appointed individuals to manage the inheritance of the child. Importantly, a will allows for the appointment of alternate individuals if the first or second appointed ones are unwilling or unsuitable to act.

Fourth, a will can also set out whether funds from the estate can be extended to the appointed individuals to reduce any financial hardship by the decision-maker, such as enlarging a home or acquiring a new home or buying a new automobile.

Fifth, the will can address wishes related to the appointment of people outside of Canada, including whether a local person can be appointed temporarily with a wish that a different person outside of Canada be appointed permanently.

Although the will is essential to provide for the temporary legal appointment and decision-making, parents should also consider putting together a memorandum or letter of wishes outlining in detail their hopes for the upbringing, education, religion, travel,

activities, and other aspects of the child's life to help and guide the appointed decision-makers.

Becoming a parent brings not only numerous joys but also significant responsibilities. One of the biggest responsibilities is ensuring that plans and legal documents are in place for the support and well-being of the child. Preparing a will that addresses the appointment of decision-makers and guardians of property is one of the most important steps that can be taken to ensure clarity, stability, and peace of mind for the family.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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