

FAMILY LAW REFORM
ALRI and Alberta Justice Positions Compared
[April 9, 2002]

[Topic headings follow Alberta Justice Technical Workbook]

3. GUARDIANSHIP, CUSTODY AND ACCESS 1

 Overview 1

 3.1 Defining Guardianship 3

 [Definition of Child] 4

 3.2 Ways of Becoming a Guardian 4

 Automatically 5

 By application to the court 6

 By appointment by an existing guardian (testamentary guardianship) 7

 3.3 Guardianship in the Intact Family 15

 3.4 Guardianship in the Non-intact Family 16

 3.5 Best Interests of Children 20

 3.6 Access to Children 25

 3.7 Child Access and Support 29

 3.8 Access to Records 30

 [Guardianship, custody and access applications] 33

 [Custody] 33

 [Access] 33

 [Application Before Child Born] 33

 [Notice of Change of Child’s Residence] 34

 [Supervision of Custody or Access 34

- (1) You must acknowledge the source of this work,
- (2) You may not modify this work, and
- (3) You must not make commercial use of this work without the prior written permission of ALRI.

FAMILY LAW REFORM

ALRI and Alberta Justice Positions Compared

[April 9, 2002]

*Topic headings follow Alberta Justice Technical Workbook

**The abbreviation "DRA1999" refers to the *Domestic Relations Amendment Act, 1999*, c. 20 which amended the spousal support provisions to comply with the constitutional requirements respecting cohabitants called for by the Alberta C.A. judgment in *Taylor v. Rossu*.

*** "AJ" refers to Alberta Justice Technical Workbook

3. GUARDIANSHIP, CUSTODY AND ACCESS

Overview

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
1	<p>The law uses the concepts of guardianship, custody and access because children require adults to help them meet their needs. Guardianship is the cluster of rights and responsibilities associated with the care and raising of children. Custody and access are components of guardianship. Custody is the right to care for children full-time. Access is the right to interact with children temporarily.</p>		

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
2	The <i>Divorce Act</i> deals with custody and access matters connected to divorce. In cases other than divorce, custody and access falls under provincial jurisdiction. Within Alberta's legislation, guardianship is the fundamental concept, and custody and access are components of guardianship.		
3	Six different provincial Acts (and the superior court's power to act in the best interests of the child in the absence of specific legislation) govern provincial guardianship, custody and access matters. Family Law Reform aims to consolidate and bring consistency to provincial legislation on these issues.		
4	Alberta Justice proposes that new provincial law retain guardianship as the fundamental concept and:	RFD18.4, Rec. 3.4: Alberta should enact legislation that builds on the existing concepts of guardianship, custody and access.	AGREE. AJ adopts basic ALRI approach.
5	[SUBSEQUENT WORKBOOK SECTIONS DEAL WITH EACH OF THE FOLLOWING ITEMS] <ul style="list-style-type: none"> • Define guardianship by describing a guardian's rights and responsibilities. • Describe three ways of becoming a guardian. 		
6	<ul style="list-style-type: none"> • Describe the guardianship rights of parents in an intact family. • Provide a method of determining the guardianship rights of parents in a family that is not intact. 		

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
7	<ul style="list-style-type: none"> • State that decisions made about guardianship are to be made in the best interests of children. Factors that should be considered in determining the best interests of children would be described. • Provide guidelines to the court in determining whether access to children should be granted. 		

3.1 Defining Guardianship

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
8	<p>Alberta Justice proposes that guardianship be defined in legislation as the responsibility of an adult person for the care and custody of a child, including the responsibility to determine where the child lives, the responsibility for making day to day decisions associated with caring for the child, and the responsibility to make major decisions such as those involving religion, education, health and legal issues.</p>	<p>RFD18.4, Rec. 7.4: Alberta legislation should define “guardianship” and “guardian” as follows:</p> <p>(1) “guardianship” has the meaning attributed to it at common law and includes</p> <p>(a) the responsibility of an adult person for the control and custody of the child, the responsibility for making decisions relating to the care and upbringing of the child and the responsibility to exercise all powers conferred by law upon a parent who is a guardian of a child, and</p> <p>(b) the rights necessary to carry out this responsibility.</p> <p>(2) a “guardian” is a person who has the authority to exercise the powers of guardianship with respect to a child.</p>	<p>AJ proposal is similar to RFD18.4, Rec. 7.4. Where the parents (guardians) do not live together with the child, subject to court order otherwise, RFD 18.4, Rec. 28.4, sets out the powers, responsibilities and rights of a custodial guardian; RFD 18.4, Rec. 34.4 sets out the powers, responsibilities and rights of an access guardian.</p>

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
9	The legislation may list specific rights as part of the general definition but parents or a court could change the list, or add new rights and responsibilities to meet individual circumstances.		As just stated, the powers conferred on a guardian by law are listed in Appendix A to ALRI’s response which compares the powers that ALRI recommends as the default position for the sharing of guardianship responsibilities by a custodial and non-custodial guardian

[Definition of Child]

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
10		RFD18.4, Rec. 6.4: Alberta legislation should define “child”, for purposes of guardianship, as an unmarried person under 18 years of age.	Definition of “minor” in Age of Majority Act is sufficient.

3.2 Ways of Becoming a Guardian

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
11	The new law will continue to provide three ways of becoming a guardian of a child:		

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
	Automatically		
12	1. <i>Automatically</i> - the mother will always be the guardian of a child, and the father will be the guardian of a child if he has a substantial connection to the mother.	RFD18.4, Rec. 10.4: Alberta legislation should provide: Unless a court of competent jurisdiction otherwise orders, the joint guardians of a minor child are (a) the mother, and	AJ statement reflects ALRI RFD18.4, Rec. 10.4. The ALRI recommendation makes the mother and father, as defined, joint guardians unless a court otherwise orders.
13		(b) the father, if (i) he was married to the mother of the child at the time of birth of the child, (ii) he was married to the mother of the child and the marriage was terminated by (A) a decree of nullity of marriage granted not more than 300 days before the birth of the child, or (B) a judgment of divorce granted not more than 300 days before the birth of the child, (iii) he cohabited with the mother of the child for at least 12 consecutive months calculated to include a period of time immediately before, during which or after the child was born and has acknowledged that he is the father of the child, or (iv) he married the mother of the child after the birth of the child and has acknowledged that he is the father of the child.	

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
	By application to the court		
14	<p>2. <i>By application to the court</i> - the court, acting in the child's best interest, will continue to have the power to appoint a person as the guardian of a child. It is proposed the new law provide:</p> <ul style="list-style-type: none"> ○ That the Provincial Court's guardianship jurisdiction will continue, but will be removed from the <i>Child Welfare Act</i>. Although the Provincial Court's jurisdiction is found in part 5 of that legislation, its jurisdiction is not limited to <i>Child Welfare Act</i> cases. ○ That the Court of Queen's Bench and the Provincial Court should have concurrent jurisdiction over guardianship. This means that if the Provincial Court has made a guardianship order, the Court of Queen's Bench could not hear another guardianship application. 	<p>RFD18.4, Rec. 11.4: The court, acting in the child's best interests, should have power to appoint a guardian of the person of a child to act jointly with any other guardian or guardians of the child or as the sole guardian of the child.</p>	<p>AJ proposal adopts RFD18.4, Rec. 11.4. ALRI made recommendations for one consistent body of substantive law that would apply regardless of the court in which the application is brought. The AJ references to removal of the guardianship provision in the <i>Child Welfare Act</i> and concurrent jurisdiction accord with ALRI's approach.</p>
15	<ul style="list-style-type: none"> ○ That the court will have the power to appoint a guardian either solely or together with another guardian or guardians and will also have the power to remove guardians. 	<p>RFD18.4, Rec. 44.4: The court should have power to make guardianship, custody or access orders in favour of one or more persons.</p>	<p>AGREE. AJ proposal on appointment is consistent with RFD18.4, Recs. 44.4 and 20.4.</p>
16		<p>RFD18.4, Rec. 20.4: The court, where it is of the opinion that the guardian's removal is in the best interests of the child, should have power to remove any guardian.</p>	

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
17	<p>○ The test for the appointment of a guardian will be the best interests of the child.</p>	RFD18.4, Rec. 1.4: All decisions with respect to guardianship, custody or access should be made in the best interests of the child.	AGREE. AJ adopts ALRI RFD18.4, Rec. 1.4. In RFD18.4, Rec. 12.4, ALRI recommends a list of factors for the court to consider in making a guardianship decision that is in the best interests of the child. This list is reproduced in Appendix B to ALRI’s response, along with comparable lists of factors for the court to consider in making custody and access decisions in the best interests of the child.
18		RFD18.4, Rec. 2.4: The “best interests of the child” should be the paramount consideration.	AJ does not state this explicitly.
19	<p>○ That the following persons be eligible to apply for guardianship:</p> <ul style="list-style-type: none"> ▪ A parent of the child. ▪ A person standing in the place of a parent of the child. ▪ A relative of the child. ▪ A stepparent of the child. ▪ With the court's approval, any other person acting on behalf of the child. 	RFD18.4, Rec. 38.4: The following persons should be eligible to apply for guardianship: <ul style="list-style-type: none"> (a) a parent; (b) a person standing in the place of a parent in relation to a child; (c) a relative of the child; (d) a step-parent of the child; or (e) with the leave of the court, any other person on behalf of the child. 	AJ proposal adopts ALRI RFD18.4, Rec. 38.4.
By appointment by an existing guardian (testamentary guardianship)			
20	<p>3. <i>By appointment by an existing guardian (testamentary guardianship)</i> - the new legislation will continue to allow a guardian to appoint in a deed or a will a guardian for his or her child that will take effect after the death of the guardian.</p>	RFD18.4, Rec. 13.4: A guardian of a child, either parent or non-parent, should have the power to name a guardian to act on the nominating guardian’s death.	Adopts RFD18.4, Rec. 13.4.

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
21	Currently testamentary guardianship takes effect immediately after the death of the parent who appointed the guardian, even if the other parent is still living and competent. The testamentary guardian acts as a joint guardian with the surviving parent. It is proposed that the new law give a parent the power to appoint a testamentary guardian with the condition that such guardianship would only take effect if both parents die or if the surviving parent has a disability that prevents the parent from acting as a guardian.	RFD18.4, Rec. 14.4: Unless the nominating guardian stipulates otherwise, testamentary guardianship should take effect immediately on the nominating guardian’s death and the appointed guardian should act jointly with any other guardian of the child.	AJ’s position differs from RFD18.4, Rec. 14.4 in which ALRI recommended that, unless the nominating guardian stipulates otherwise, testamentary guardianship should take effect immediately on the nominating guardian’s death and the appointed guardian should act jointly with any other guardian of the child. It should be noted that unless a court orders otherwise, where the person named as guardian by the deceased parent / guardian does not live with the child, that person would have powers, responsibilities and rights of a non-custodial guardian under ALRI’s default provisions. The discussion in ALRI RFD18.4 at 98-109 is attached as Appendix C.
22	It is proposed that testamentary guardianship legislation also include the following provisions:		
23	<ul style="list-style-type: none"> • That the nomination of a guardian be recognized if it is made in a will or in a written document that has been signed, witnessed and dated. 	RFD18.4, Rec. 15.4: The nomination of a guardian should be effective if it is made (a) by will, or (b) in a written document that has been signed, witnessed and dated.	AGREE. Adopts RFD18.4, Rec. 15.4.
24	<ul style="list-style-type: none"> • That a guardian who appoints a testamentary guardian should be able to revoke that appointment at any time. 	RFD18.4, Rec. 16.4: The nominating guardian should be able to revoke the nomination.	AGREE. Adopts RFD18.4, Rec. 16.4.
25	<ul style="list-style-type: none"> • That the testamentary guardianship nomination should only take effect if the nominated person expressly or by his or her conduct accepts the nomination. 	RFD18.4, Rec. 17.4: A guardianship nomination should not take effect until accepted expressly, or impliedly by unequivocal conduct.	AGREE. Adopts RFD18.4, Rec. 17.4.

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
26	<ul style="list-style-type: none"> • That if more than one person is nominated as guardian, any person so nominated can accept, even if declined by other nominated persons, unless the nominator expressly provides otherwise. 	RFD18.4, Rec. 18.4: If more than one person is nominated as a guardian, any person so nominated should be entitled to accept the nomination, even if it is declined by any other nominee, unless the nominator expressly provides otherwise.	AGREE. Adopts RFD18.4, Rec. 18.4.
27	<ul style="list-style-type: none"> • That a guardian may appoint another person to act in his or her place if the guardian is temporarily absent or incapacitated. 	RFD18.4, Rec. 19.4: A guardian should be able to appoint a person to act in their place in the event of the guardian’s temporary absence or incapacity to act as a guardian.	AGREE. Adopts RFD18.4, Rec. 19.4.
28	<ul style="list-style-type: none"> • That the court has the power to remove a testamentary guardian where the court is of the opinion that to do so is in the best interests of the child. 	RFD18.4, Rec. 20.4: The court, where it is of the opinion that the guardian’s removal is in the best interests of the child, should have power to remove any guardian.	AGREE. Adopts RFD18.4, Rec. 20.4.
29	<ul style="list-style-type: none"> • Except where an appointment or nomination provides for an earlier termination, guardianship would be terminated by the following: <ul style="list-style-type: none"> □ The guardian's resignation or death. □ The child turning 18 or marrying. □ A court order removing the guardian. 	RFD18.4, Rec. 21.4: Except where an appointment or nomination provides for earlier termination, guardianship should be terminated by <ul style="list-style-type: none"> (a) the guardian’s resignation; (b) the child <ul style="list-style-type: none"> (i) attaining the age of majority, or (ii) marrying; (c) the guardian’s death; or (d) a court order to remove the guardian. 	AGREE. Adopts RFD18.4, Rec. 21.4.
30	Issue for discussion: Testamentary guardianship in the non-intact family.		

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
31	<p>Background: Some people have suggested that special provision should be made for testamentary guardianship in non-intact families. For example, the law could provide that the surviving parent rather than the testamentary guardian is entitled to become the guardian, or it could provide that the surviving parent is entitled to become a joint guardian with the testamentary guardian.</p>		<p>DISAGREE. Under ALRI recommendations, any guardian would be able to appoint a guardian whose appointment would take place immediately upon the death of the guardian making the appointment. The guardian so appointed would act jointly with a surviving guardian. No distinction would be made between the situation of guardians in intact and non-intact families.</p>

AJ Questions:

3.2.a. Should there be any special provisions to deal with testamentary guardianship in a non-intact family where the parents are no longer joint guardians?

ALRI Responses:

No. See ALRI RFD18.4 (Guardianship, Custody and Access), Rec. 14.4. By way of example, AJ suggests the law could provide that the surviving parent rather than the testamentary guardian is entitled to become the guardian, or it could provide that the surviving parent is entitled to become a joint guardian with the testamentary guardian. (Under the AJ proposals, for intact families, testamentary guardianship would not take effect until after the death of a surviving parent / guardian – a position with which we disagree.

AJ Questions:

ALRI Responses (cont'd):

AJ uses the term “testamentary guardianship” to describe a guardian appointed by deed or will. For the sake of brevity, we do the same in this submission.

When we examined guardianship, we considered the ways in which guardianship could arise. We concluded that most parents should be guardians automatically as a matter of law: RFD18.4, Rec. 10.4; the court, acting in the child’s best interests, should have power to appoint or remove a guardian: RFD18.4, Recs. 11.4 and 18.4; and a guardian of the child, either parent or non-parent, should have power to name a guardian to act on the nominating guardian’s death: RFD18.4, Rec. 13.4. In the latter instance, the guardianship would take effect immediately on the nominating guardian’s death unless the nominating guardian made another stipulation: RFD18.4, Rec. 14.4.

AJ Questions:

ALRI Responses (cont'd):

We would make no distinction among guardians. That is to say, under ALRI's recommendations, any guardian would be able to appoint a guardian whose appointment would take place, in the usual case, immediately upon the death of the guardian making the appointment. The guardian so appointed would act jointly with a surviving guardian. For example, if a surviving parent is a guardian, the guardianship continues. That parent would be a guardian together with the person nominated in the appointing document. The surviving parent would have to work together with the guardian nominated by the deceased parent. If the surviving parent and the nominated guardian are unable to work out their differences, they could apply to the court for an order resolving their respective positions (as could parent guardians who live separate and apart and are unable to agree about how to share their guardianship responsibilities).

AJ Questions:

ALRI Responses (cont'd):

We would make no distinction among guardians. That is to say, under ALRI's recommendations, any guardian would be able to appoint a guardian whose appointment would take place, in the usual case, immediately upon the death of the guardian making the appointment. The guardian so appointed would act jointly with a surviving guardian. For example, if a surviving parent is a guardian, the guardianship continues. That parent would be a guardian together with the person nominated in the appointing document. The surviving parent would have to work together with the guardian nominated by the deceased parent. If the surviving parent and the nominated guardian are unable to work out their differences, they could apply to the court for an order resolving their respective positions (as could parent guardians who live separate and apart and are unable to agree about how to share their guardianship responsibilities).

AJ Questions:

ALRI Responses (cont'd):

The use of the word “joint” in AJ’s question is confusing. Whether or not they are living together, under ALRI’s recommendations, in the usual situation, both of a child’s parents would be guardians and share in the distribution of the guardianship powers. The death of a parent guardian (or other guardian) should not change the status of a surviving parent guardian (or other guardian). Under no circumstances should a parent whose guardianship has been terminated by the court, or who never attained the status of guardian under the law, automatically become a guardian on the death of the other parent / guardian. The law should require a parent who is not a guardian but wishes to acquire the status of guardian to apply to court for an order appointing them.

3.2.b Should the responsibilities of the deceased guardian flow to the surviving guardian or to the guardian appointed by the deceased guardian?

The responsibilities of the deceased guardian should flow to the guardian appointed by the deceased guardian: RFD18.4 (Guardianship, Custody and Access), Rec. 14.4.

3.3 Guardianship in the Intact Family

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
32	Alberta Justice proposes that legislation provide each parent in an intact family with the rights, responsibilities and obligations of guardianship unless the guardians agree, or a court orders, otherwise. These rights, responsibilities and obligations will be spelled out in legislation. The legislation will assume that guardians in an intact family cooperate and work together ...	RFD18.4, Rec. 8.4: Alberta legislation should provide that, unless a court orders otherwise, where the guardian lives with the child, the guardian has all the powers, responsibilities, rights and duties of guardianship attributed to a custodial guardian by Recommendation No. 28.4.	AGREE. Under ALRI’s recommendations, where both parents live with the child, they will both have the full panoply of powers, responsibilities and rights that may be exercised by a custodial guardian.

3.4 Guardianship in the Non-intact Family

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
33	... but legislation will provide for those situations where cooperation and working together is no longer possible.		AGREE.
34	Issue for discussion: Determining parenting arrangements following a separation or where parents have never lived together.		
35	Background: Under Alberta's current law, parents who separate have two choices. They can continue to parent their children as they did prior to the separation (either informally or formally through a written agreement or court order) or they can establish a new parenting arrangement (either informally or formally through a written agreement or court order). Courts currently base their decisions on custody and access on the best interests of the child but the factors considered in determining parenting arrangements can be substantially different from case to case.		

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
36	Ideally, parents should agree on parenting arrangements themselves. This is often difficult for parents who have never lived together or are no longer living together because of separation or divorce. Parents that cannot agree on a suitable parenting arrangement require legislation that establishes a clear, comprehensive, and flexible mechanism for determining parenting arrangements.	RFD18.4, Rec. 4.4: Alberta law should encourage parents, or other guardians, to work out their own arrangements for sharing parenting responsibilities without requiring the use of judicial process or court order.	AGREE that legislation should establish a clear, comprehensive and flexible mechanism for determining parenting arrangements. AJ position reflects ALRI RFD18.4, Recs. 4.4 and 36.4, and Rec. 5.4. on the Sole Custody Model. See also RFD18.4, pp. 64-66 for ALRI’s discussion of three non-legislative mechanisms: parenting education, individualized parenting plans and the use of non-judicial processes to resolve parenting disputes. The flexible mechanisms should include: (1) opportunities for parents to take steps on their own volition (extra-judicial); (2) steps for parents to take on court order (court-connected); and (3) pre-trial settlement conferences involving the judiciary (judicial dispute resolution).
37		RFD18.4, Rec. 36.4: (1) The guardians of a child may enter into a written agreement with respect to matters pertaining to the upbringing of the child. (2) Where the guardians referred to in subsection (1) live together, or the agreement is made in anticipation that they will live together, that agreement shall not include the right to custody of or access to the child.	
38	• Parenting arrangements should focus on the needs and best interests of the children.	RFD18.4, Rec. 1.4: All decisions with respect to guardianship, custody and access should be made in the best interests of the child.	AGREE. Reflects ALRI RFD18.4, Rec. 1.4.

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
39	<ul style="list-style-type: none"> Legislation should recognize the child's need for continuity of relationships after parents separate, particularly with extended family. 		AGREE. See ALRI RFD18.4, Rec. 23.4 for a list of factors for the court to consider in determining a child's best interests where parents do not live together.
40	<ul style="list-style-type: none"> Both parents whether living together or apart have a contribution to make to the children's development and well-being. 		AGREE.
41	<ul style="list-style-type: none"> All parents should be accountable for not fulfilling their parenting responsibilities. 		AGREE that all parents have responsibilities toward child. Uncertain what is meant by being "accountable for not fulfilling their parenting responsibilities." Does this mean that punitive sanctions would be imposed, or simply that lack of parental accountability would be a factor to consider in making decisions in the child's best interests?
42	<ul style="list-style-type: none"> Federal and provincial legislation on parenting roles and responsibilities should be consistent. 		AGREE. ALRI General Premise 1 is that Alberta legislation should be compatible with the federal <i>Divorce Act</i> : RFD18.1 at 51, reproduced in RFD18.4 at xiii-xiv.
43	<ul style="list-style-type: none"> Legislation to determine parenting arrangements should be clear to allow for certainty and flexible to respond to individual family circumstances and on-going child development. 		AGREE.
44	<ul style="list-style-type: none"> The legislation to determine parenting arrangements should encourage and facilitate cooperation and communication between parents. 		AGREE.

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
45	In addition to the above principles, stakeholders emphasized the need for adequate support services such as counseling and education for parents and children experiencing separation and divorce.		AGREE.
46	Preliminary consultations were conducted with a cross-section of Albertans in June 2001 to discuss different models of determining parenting roles and responsibilities after separation and divorce. The consultations did not establish clear support for any particular model of parenting responsibility over another. However, from the information gathered at these meetings the following principles were identified:	RFD18.4, Rec. 5.4: The Sole Custody Model set out in Recommendations 23.4 to 35.4 should apply to parents living separate and apart who cannot agree about sharing their parenting responsibilities.	AJ avoids using the words “custody” and “access” when discussing the sharing of parenting responsibilities. In this sense, AJ does not accept ALRI’s Sole Custody Model. ALRI’s Model includes default guardianship powers, responsibilities and rights for parents who do not live together and who cannot reach their own agreement about how to share the parenting role. Under ALRI’s Model, either party could bring an application to the court for a different distribution, but court involvement would not be necessary. Under AJ’s approach, court order appears to be a necessary alternative to parent / guardian agreement.

AJ Questions:

3.4.a. Should provincial and federal legislation regarding parenting arrangements be consistent?

ALRI Responses:

AGREE, in general, that provincial and federal legislation regarding parenting arrangements should be consistent.

3.4.b. Are the attributes for parenting arrangements appropriate? What changes if any would you suggest?

Agree with AJ's list of attributes, subject to discussion of the implications of making parents accountable for not fulfilling their responsibilities, and attention to ALRI's lists of factors to consider in determining a child's best interests in guardianship, custody and access cases, respectively: RFD18.4, Recs. 12.4, 23.4 and 32.4.

3.5 Best Interests of Children

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
47	Current legislation does not indicate what factors should be considered by the court in determining the best interests of children. It is proposed that new legislation include a list of factors that must be considered by the court. The court would be able to consider other factors not on the list that might be appropriate in a particular case.	RFD18.4, Rec. 22.4: Legislation should provide for the expeditious resolution, by the court, of disputes between guardians.	As noted, ALRI recommends three overlapping lists of factors for the court to consider in making guardianship, custody and access decisions: see Appendix B. ALRI's lists are discretionary, whereas it appears that at least some portion of AJ's list (which is set out below, lines 53, 56-76) would be mandatory.
48		RFD18.4, Rec. 42.4: The court should have wide powers of discretion in exercising jurisdiction over guardianship, custody and access.	
49		RFD18.4, Rec. 44.4: The court should have power to make guardianship, custody or access orders in favour of one or more persons.	See also line 15 above.

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
50		RFD18.4, Rec. 25.4: The court, acting in the child’s best interests, should have power to make an order granting custody to any one or more persons who are guardians.	AJ is silent about restricting custody to persons who are guardians (but see comment on line 77 below).
51	It is proposed that Alberta law should provide that, in allocating the responsibilities of guardianship between guardians, courts shall ensure that the health or safety of a child should not be placed at risk.	RFD18.4, Rec. 43.4: The powers of discretion should include the power of the court, acting in the child’s best interests, to divide the incidents of guardianship among the guardians.	ALRI’s Sole Custody Model specifies the respective powers, responsibilities and rights of custodial and access parents who are unable to agree. All three lists of factors to consider (guardianship, custody and access) include consideration of the child’s health (Recs. 12.4(7)(b), 23.4(2), 32.4(2)) and safety (Rec. 12.4(11), 23.4(13), 32.4(7)). As already stated, AJ appears to contemplate only two alternatives: agreement or court-ordered division of guardianship incidents. It does not provide a default position that would apply in the absence of parental agreement or court order (see Appendix A for ALRI’s default division of guardianship incidents).
52		RFD18.4, Rec. 37.4: The court, acting in the child’s best interests, should have power to disregard any provision of a parenting agreement pertaining to the incidents of guardianship, including custody or access.	AJ is silent about the power of the court to disregard a provision in a parenting agreement. In cases brought before the Court of Queen’s Bench (but not the Provincial Court), this power may be found in the court’s <i>parens patriae</i> jurisdiction.
53	It is further proposed that Alberta law should provide that, in allocating the responsibilities of guardianship between guardians that is in the best interests of the child, the court may consider any of the following factors:	RFD18.4, Rec. 23.4: Alberta law should provide that, in making a custody determination that is in the best interests of the child, the court may consider any of the following factors:	RFD18.4, Rec. 23.4, and RFD 18.4, Rec. 29.4 list factors the court may consider in making custody and access determinations in the best interests of children.

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
54			ALRI recommended separate, but similar, lists of factors for the court to consider in making guardianship, custody and access determinations. The ALRI lists are reproduced in Appendix A to this chart.
55			The AJ list builds on ALRI's list of factors to consider in making a custody determination that is in the best interests of the child. Factors 4 and 6 are government additions. Factor 19 is similar to RFD18.4, Rec. 24.4: The past conduct of the person seeking custody is irrelevant unless it affects parenting. All of the other factors are taken from the ALRI list. [COMPARE OUR FACTORS FOR ACCESS IN REC. 32.4.]
56	1. The child's age;	(1) the child's age;	
57	2. The child's; a. health, emotional well-being and special needs, b. personality, character and emotional needs, and c. physical, psychological, social and economic needs;	(2) the child's (a) health, emotional well-being and special needs, (b) personality, character and emotional needs, and (c) physical, psychological, social and economic needs;	
58	3. The nature and quality of the child's relationship with each guardian.	(3) the nature and quality of the child's relationship with each guardian;	
59	4. The impact on the child of continuing or not continuing the child's relationship with each guardian.		

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
60	5. The child's interaction with other persons residing in the child's household or involved in the care and upbringing of the child.	(4) the child's interaction with other persons residing in the child's household or involved in the care and upbringing of the child;	
61	6. The wishes of the child with respect to residence and contact with each guardian.		
62	7. If the child is 12 years of age or older, greater weight should be given to the views and preferences of the child.	(5) if the child is twelve years of age or older, the views and preferences of the child;	
63	8. The duration, stability and adequacy of the child's current living arrangements or the permanence, stability and adequacy of the family unit with which it is proposed that the child will live.	(6) the duration, stability and adequacy of the child's current living arrangements or the permanence, stability and adequacy of the family unit with which it is proposed that the child will live;	
64	9. The desirability of maintaining continuity in the child's living arrangements, including consideration of the child's current or anticipated adjustment to home, school and community.	(7) the desirability of maintaining continuity in the child's living arrangements, including consideration of the child's current or anticipated adjustment to home, school and community;	
65	10. The ability and willingness of each guardian to provide the child with guidance and education, the necessities of life and the special needs of the child.	(8) the ability and willingness of each guardian to provide the child with guidance and education, the necessities of life and the special needs of the child;	
66	11. The child's religious upbringing.	(9) the child's religious upbringing;	
67	12. The child's ethnic and cultural heritage.	(10) the child's ethnic and cultural heritage;	
68	13. The plans proposed for the care and upbringing of the child.	(11) the plans proposed for the care and upbringing of the child;	

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
69	14. Contact with the child's other parent or other guardian.	(12) contact with the child's parent or other guardian;	
70	15. Whether the guardian has ever acted in a violent or abusive manner towards: a. this or any other child, or b. the child's parent or other guardian, or c. a member of their household.	(13) whether the guardian has ever acted in a violent manner towards (a) this or any other child, (b) the child's parent or other guardian, or (c) a member of their household;	
71	16. The motivation of each guardian and their capacities to give the child love, affection and guidance.	(14) the motivation of each guardian and their capacities to give the child love, affection and guidance;	
72	17. The capacity of each guardian to cooperate or to learn to cooperate in childcare.	(15) the capacity of each guardian to cooperate or to learn to cooperate in child care;	
73	18. Methods to help guardians cooperate, methods for resolving disputes and each guardian's willingness to use those methods.	(16) methods for assisting cooperation between or among guardians and resolving disputes and each guardian's willingness to use those methods;	
74	19. Where one of the guardians has acted in a violent or abusive manner as described in factor 15, the other guardian does not have an obligation to cooperate with that guardian in child care, and the provisions of factors 17 and 18 do not apply.	RFD 18.4, Rec. 24.4: The past conduct of the person seeking custody is irrelevant unless it affects parenting.	
75	20. The effect on the child if one guardian has sole authority over the child's upbringing.	(17) the effect on the child if one guardian has sole authority over the child's upbringing; and	
76	21. Any other factor the court considers relevant.	(18) any other factor the court considers relevant.	

3.6 Access to Children

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
77	Issue for discussion: Eligibility of non-guardians to have access to a child.		The wording of this issue implies that ordinarily custody and access are linked to guardianship. If this is so, then AJ would appear to accept ALRI’s recommendation restricting applications for custody to guardians: see line 50 above.
78	Background: Although some have suggested access be the right of the child, it is proposed that Alberta’s family law legislation continue to treat access as one of the rights of guardianship.	RFD18.4, Rec. 30.4: Alberta legislation should specify that access is the right of the child.	DISAGREE. This differs from ALRI position: RFD18.4, Rec. 30. ALRI recommends that legislation specify access is the right of the child, then distinguishes the access position of a non-custodial guardian and a non-guardian. RFD18.4, Rec. 34.4 stipulates that, subject to court order otherwise, a non-custodial guardian should have reasonable access to the child. The recommendations proceed from the assumption that, except where the court orders otherwise, access to both parents is in the child’s best interests and therefore the child’s right. The emphasis in guardianship should be placed on the responsibilities for, and not rights, to the child.
79	However, it is further proposed that new legislation give children a separate right of access so that a court could order continued access of the child to a person with whom the child has had frequent and positive contact, whether that person is a guardian or not.		AGREE. The distinction between the usual position of a parent / guardian and that of other persons should not be in the positioning of the “right” as one of the parent or child, but in the approach the law takes to promoting the child’s right of access to a parent / guardian in contrast to other persons.

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
80	There is currently some judicial debate over whether or not a person has to be a guardian before the Provincial Court can make an access order. The proposed new law will clearly give the Provincial Court jurisdiction to make an access order in favour of someone who is not a guardian.	RFD18.4, Rec. 35.4: A non-guardian with access to a child should have the powers, responsibilities and rights agreed to by the custodial guardian or ordered by the court.	AGREE. ALRI made recommendations for one body of substantive law that would apply, to the extent constitutionally allowed, regardless of the court in which the proceeding is brought.
81	The new law proposes to allow the following persons to apply for access: <ul style="list-style-type: none"> • A guardian. • A non-guardian who is: <ul style="list-style-type: none"> ○ a parent. ○ a person standing in the place of a parent. ○ a relative (e.g., grandparent). ○ a stepparent. • With leave of the court, any other person on behalf of the child. 	RFD18.4, Rec. 40.4: The following persons should be eligible to apply for access to a child: <ul style="list-style-type: none"> (a) a guardian, (b) a non-guardian who is <ul style="list-style-type: none"> (i) a parent, (ii) a person standing in the place of a parent in relation to a child, (iii) a relative of the child, (iv) a step-parent of the child, (c) with the leave of the court, any other person on behalf of the child. 	AGREE. Adopts RFD18.4, Rec. 40.4.
82	Any access order would consider the best interests of the child. It is further proposed that some restrictions be placed on persons applying for access who are not guardians to guard against potentially negative family disruptions and to respect the guardian's right to decide what is in the best interests of the child.		AGREE. Reflects RFD18.4, Rec. 35.4, recommending that a non-guardian with access to a child should have the powers, responsibilities and rights agreed to by the custodial guardian or ordered by the court.

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
83	Access applications by persons who are not guardians could be restricted to situations where the guardians or parents are not living together or where one of the guardians or parents is dead.	RFD18.4, Rec. 31.4: The court, acting in the child’s best interests, should have power to make an order granting access to a child to any one or more of the following persons: (a) a non-custodial guardian, or (b) any other person where (i) the child’s parents, if alive, are living separate and apart, or (ii) one or both of the child’s parents are deceased.	AGREE. Would be in accord with ALRI RFD18.4, Rec. 31.4. <i>Regarding custody, compare ALRI RFD18.4, Rec. 25.4: The court, acting in the child’s best interests, should have power to make an order granting custody to any one or more persons who are guardians.</i>
84	When an access application by a non-guardian was heard, it would be possible to place restrictions on access beyond the usual "in the best interests of the child" test.		ALRI did not address this point previously.
85	These restrictions could require that: • There has been frequent and positive contact in the past and that continuing contact would be in the best interests of the child.		AGREE. Under ALRI’s list of factors for the court to consider, the nature and quality of the child’s relationship with the person seeking access is a best interests consideration: Rec. 32.4(3). The requirement of “frequent and positive contact in the past” narrows the scope of the court’s best interest consideration but the outcome on a weighing of the circumstances is unlikely to be different.
	• Where a guardian is opposed to access by a person who is not a guardian, the court could not allow access unless it can be shown that it is so clearly in the best interests of the child as to make the guardian’s opposition unreasonable.		AGREE. ALRI’s list of “best interests” factors includes the wishes of the person with custody of the child: Rec. 32.4(8). The requirement that the guardian’s opposition must be shown to be unreasonable would enhance the weight given to the guardian’s wishes.

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
86	Currently, grandparents are able to apply for access based on the best interests of the child. Criteria include the history of the grandparents' association with the child and the child's views and wishes. The current provision has been criticized by some because the application can be brought at any time and is not restricted to situations where the guardians are living separate and apart or where a parent is deceased.		

AJ Questions:

3.6.a. Is the list of persons who can apply for access appropriate? Should anyone be added or dropped from the list?

3.6.b. Should access applications by non-guardians be restricted to the situations where guardians or parents are not living together or where one of the guardians or parents is dead?

3.6.c. Are the proposed restrictions on access by non-guardians appropriate? Would you add or delete any of the conditions?

ALRI Responses:

Yes, the list is appropriate. No additions or deletions should be needed.

Yes, access applications by non-guardians should be restricted to these situations: ALRI RFD18.4, Rec. 31.4.

Yes, the proposed restrictions are appropriate. No additions or deletions need be made to any of the conditions.

3.6.d. Should the same conditions for access apply to grandparents as apply to other non-guardians? If not, what conditions, if any, should apply to access for grandparents?

Yes, the same conditions for access should apply to grandparents.

3.7 Child Access and Support

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
87	<i>Issue for discussion:</i> Link between access and child support.		
88	Background: Currently, case law maintains a separation between access and child support. Access is not withheld to force payment of child support, nor is child support made contingent upon receiving access. The rationale is that denying access to force payment of support, and visa versa, would cause further harm to the child.	RFD18.4, Rec. 33.4: The conferral or withholding of contact with the child should not be used to reward or punish a parent for compliance or non-compliance with the child support obligation.	AGREE: ALRI RFD18.4, Rec. 33.4.
89	However, the suggestion has been made that there may be some cases in which it would be appropriate for a court to link access and payment of support. The new law could expressly give the court the discretion to link access and support.		DISAGREE.

AJ Question:

3.7.a. Should the court have the discretion to link access and child support or should the two continue to be kept separate?

ALRI Response:

Keep separate. As we recommended in RFD18.4, Rec. 33.4, access and child support should continue to be kept separate. Access should be determined on the basis of the child's best interests being furthered by a continuing personal relationship with the non-custodial parent, not on whether the non-custodial parent does or does not pay support.

3.8 Access to Records

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
90	<i>Issue for discussion:</i> Access to a child's records by the non-custodial parent.		
91	Background: Parents who have access to their children have expressed frustration in being unable to obtain access to their children's health and education records. The <i>Divorce Act</i> gives parents the right to receive such records but does not provide an obligation upon custodial parents to provide them.		

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
92	It has been suggested that legislation require a custodial parent to provide records to the other parent and that third parties such as health authorities and school boards be required to provide records when served with the appropriate form, such as a copy of the court order entitling a parent to receive records.	RFD18.4, Rec. 28.4: Unless otherwise ordered by the court or agreed to by the parties in writing, the custodial guardian of the child should have the day-to-day care and control of the child, including the following powers, responsibilities and rights: (10) shall accommodate reasonable requests from a non-custodial guardian for information about matters relating to the child’s health, welfare and education [NOTE: COMPARE <i>DIVORCE ACT</i> , s. 16(5); SOME PROVINCIAL STATUTES.]	

AJ Questions:

3.8.a. Should legislation provide a mechanism that will assist parents to obtain access to records to which they are entitled?

3.8.b. What approach would be the most workable for health authorities, school boards and other third parties?

ALRI Responses:

Yes, but that mechanism should consist of placing an obligation on the parent who has custodial guardianship to provide the institution maintaining the record with written permission to release the information directly to the non-custodial guardian. The obligation should be spelled out in law and be enforceable: a) on application when the custodial guardian fails to accommodate the access guardian's (non-custodial parent's) reasonable request for information, or b) in accordance with the terms of an order made by the court when it determines access. Using this mechanisms will reduce the opportunities for conflict between the parents.

The most workable approach for third parties would be to act on the permission provided by the custodial guardian to release information directly to the non-custodial (access) guardian, or failing this, a court order for disclosure.

[Guardianship, custody and access applications]

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
	[Custody]		
93		RFD18.4, Rec. 39.4: Only a guardian of the child should be eligible to apply for custody.	As noted above on lines 50 and 77, AJ does not pick up this point. It may be implied.
	[Access]		
94	See line 81 above.		

[Application Before Child Born]

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
95		RFD18.4, Rec. 41.4: The court should have power to grant guardianship, custody or access orders before the birth of a child but such orders should not take effect until the birth of the child.	AJ is silent.

[Notice of Change of Child’s Residence]

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
96		RFD18.4, Rec. 29.4: Unless otherwise ordered by the court or agreed to by the parties in writing, at least thirty days before changing the child’s place of residence, the custodial guardian shall notify any other guardian, in writing, of the time at which the change will be made and the new place of residence of the child.	AJ does not discuss the inclusion of a requirement to give notice of an intended change of the child’s residence.

[Supervision of Custody or Access]

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
97		RFD18.4, Rec. 46.4: The court should have power to give such directions as it considers appropriate for the supervision of the custody of, or access to, a child by another person or other body, provided that person or body has consented to act as supervisor.	AJ does not discuss the court’s power to make a supervisory order as part of its jurisdiction over custody and access. ALRI thought it would be useful to specify the power and requirement for the supervisor’s consent in legislation.

Guardianship in Non-Intact Families in the Absence of Parental Agreement or Court Order Otherwise

RFD18.4, Rec. 28.4: Custodial Guardian	RFD18.4, Rec. 34.4: Non-custodial Guardian
Unless otherwise ordered by the court or agreed to by the parties in writing, the custodial guardian of the child should have the day-to-day care and control of the child, including the following powers, responsibilities and rights:	Unless otherwise ordered by the court or agreed to by the parties in writing, the non-custodial guardian of the child should have reasonable access to the child, and the following powers, responsibilities and rights:
(1) may act on behalf of the child [NOTE: SEE <i>DRA</i> , s. 46(A).]	(1) with the consent of the custodial guardian, may act on behalf of the child, [NOTE: COMPARE <i>DRA</i> , s. 46(A).]
(2) may appear in court and prosecute or defend an action or proceedings in the name of the child, [NOTE: SEE <i>DRA</i> , s. 46(B).]	(2) with the consent of the custodial guardian, may appear in court and prosecute or defend an action or proceedings in the name of the child, [NOTE: COMPARE <i>DRA</i> , s. 46(B).]
(3) may decide where the child is to live, whether permanently or temporarily,	
(4) may decide with whom the child is to live and with whom the child is to associate,	
(5) may make decisions relating to the child’s education, [NOTE: REGARDING SS. (3), (4) AND (5), SEE <i>DRA</i> , s. 46(D).]	
(6) may appoint a person as guardian to act in the event of the guardian’s death or incapacity, [NOTE: COMPARE <i>DRA</i> , s. 48.]	(3) may appoint a person as guardian to act in the event of the guardian's death or incapacity, [NOTE: COMPARE <i>DRA</i> , s. 48.]
(7) shall protect the child, [NOTE: EXTREME FAILURE TO PROTECT LEADS TO <i>CWA</i> INTERVENTION.]	(4) shall protect the child, [NOTE: EXTREME FAILURE TO PROTECT LEADS TO <i>CWA</i> INTERVENTION.]
	(5) may take custody where the custodial parent dies,
(8) if a parent, shall give the child love and affection,	(6) if a parent, shall give the child love and affection,
(9) if a parent, shall provide the child with the necessities of life from the parent’s personal resources, [NOTE: COMPARE <i>MOA</i> , s. 2(2) AND (3).]	(7) if a parent, shall provide the child with the necessities of life from the parent's personal resources, [NOTE: COMPARE <i>MOA</i> , s. 2(2) AND (3).]
	(8) may maintain communication with the child and visit the child on terms as agreed by the parties or ordered by the court,
(10) shall accommodate reasonable requests from a non-custodial guardian for information about matters relating to the child’s health, welfare and education [NOTE: COMPARE <i>DIVORCE ACT</i> , s. 16(5); SOME PROVINCIAL STATUTES.]	(9) may request from the custodial guardian information about matters relating to the child's health, welfare and education, [Note: Compare <i>Divorce Act</i> , s. 16(5); some provincial statutes.]

RFD18.4, Rec. 28.4: Custodial Guardian	RFD18.4, Rec. 34.4: Non-custodial Guardian
	(11) may exercise guardianship powers consistent with the wishes of the custodial guardian,
(11) may discipline the child	(12) may discipline the child as reasonable when in contact with the child,
(12) may decide the child’s religious upbringing	
(13) may make medical treatment decisions,	(13) may make urgent or emergency medical treatment decisions for the child,
(14) may grant or refuse consent in matters concerning the child, <i>e.g.</i> , (a) adoption [NOTE: SEE <i>CWA</i> , SS. 56, 57.] (b) marriage [NOTE: SEE <i>MARRIAGE ACT</i> , S. 18.] (c) private guardianship [NOTE: SEE <i>CWA</i> , S. 52.] (d) change of name [NOTE: SEE <i>CHANGE OF NAME ACT</i> , SS. 7, 7.1, 11, 12.]	(14) may grant or refuse consent in matters concerning the child, <i>e.g.</i> , (a) adoption, [NOTE: SEE <i>CWA</i> , SS. 56, 57.] (b) marriage, [NOTE: SEE <i>MARRIAGE ACT</i> , S. 18.] (c) private guardianship, [NOTE: SEE <i>CWA</i> , S. 52.] (d) change of name, and [NOTE: SEE <i>CHANGE OF NAME ACT</i> , SS. 7, 7.1, 11., 12.]
(15) is entitled to receive notice of matters affecting the child, <i>e.g.</i> proceedings for (a) declaration of parentage [NOTE: SEE <i>DRA</i> , S. 66.] (b) adoption [NOTE: SEE <i>CWA</i> , S. 60.] (c) child welfare apprehension, supervision, temporary or permanent guardianship [NOTE: SEE <i>CWA</i> , SS. 18, 19, 21, 27.] (d) private guardianship [NOTE: SEE <i>CWA</i> , S. 50.].	(15) is entitled to receive notice of matters affecting the child, <i>e.g.</i> , (a) declaration of parentage, [NOTE: SEE <i>DRA</i> , S. 66.] (b) adoption, [NOTE: SEE <i>CWA</i> , S. 60.] (c) child welfare apprehension, supervision, temporary or permanent guardianship, [Note: See <i>CWA</i> , ss. 18, 19, 21 27.] (d) private guardianship. [NOTE: SEE <i>CWA</i> , S. 50.]
RFD18.4, Rec. 29.4: Unless otherwise ordered by the court or agreed to by the parties in writing, at least thirty days before changing the child’s place of residence, the custodial guardian shall notify any other guardian, in writing, of the time at which the change will be made and the new place of residence of the child.	(10) is entitled to receive at least thirty days notice from the custodial guardian of an intended change in the child's place of residence, [OR LESS IF COURT ABRIDGES TIME: SEE REC. 29.4.]

Child’s Best Interests – Factors for Court to Consider

Guardianship	Custody	Access
RFD18.4, Rec. 12.4: Alberta law should provide that, in making a guardianship decision that is in the best interests of the child, the court may consider any of the following factors:	RFD18.4, Rec. 23.4: Alberta law should provide that, in making a custody determination that is in the best interests of the child, the court may consider any of the following factors:	RFD18.4, Rec. 32.4: Alberta law should provide that, in making an access determination that is in the best interests of the child, the court may consider any of the following factors:
(1) the need for guardianship;		
(2) the motivation of the person seeking guardianship;	(14) the motivation of each guardian and their capacities to give the child love, affection and guidance;	(11) the motivation of the person seeking access and their capacity to give the child love, affection and guidance;
(3) the wishes of any existing guardian;		
(7) the suitability of the person seeking guardianship, having regard to (a) the child’s age;	(1) the child’s age;	(1) the child’s age;
(7) the suitability of the person seeking guardianship, having regard to (b) the child’s (i) health, emotional well-being and special needs, (iii) physical, psychological, social and economic needs;	(2) the child’s (a) health, emotional well-being and special needs, (b) personality, character and emotional needs, and (c) physical, psychological, social and economic needs;	(2) the child’s (a) health, emotional well-being and special needs, (b) personality, character and emotional needs, and (c) physical, psychological, social and economic needs;
(5) the child’s relationship with the person seeking guardianship;	(3) the nature and quality of the child’s relationship with each guardian;	(3) the nature and quality of the child’s relationship with the person seeking access;
	(4) the child’s interaction with other persons residing in the child’s household or involved in the care and upbringing of the child;	
(6) if the child is twelve years of age or older, the views and preferences of the child;	(5) if the child is twelve years of age or older, the views and preferences of the child;	(4) if the child is twelve years of age or older, the views and preferences of the child, which shall be given considerable weight;

Guardianship	Custody	Access
	(6) the duration, stability and adequacy of the child's current living arrangements or the permanence, stability and adequacy of the family unit with which it is proposed that the child will live;	
(8) the ability and willingness of the person seeking guardianship to make decisions with respect to the child's guidance and education, special needs, and the provision of the necessities of life;	(8) the ability and willingness of each guardian to provide the child with guidance and education, the necessities of life and the special needs of the child;	
(9) the child's religious upbringing;	(9) the child's religious upbringing;	
(10) the child's ethnic and cultural heritage;	(10) the child's ethnic and cultural heritage;	(5) the child's ethnic and cultural heritage;
(4) the plans the person seeking guardianship has for the child, including the desirability of maintaining continuity in the child's life;	(7) the desirability of maintaining continuity in the child's living arrangements, including consideration of the child's current or anticipated adjustment to home, school and community;	
	(11) the plans proposed for the care and upbringing of the child;	(6) the parenting ability of the person seeking access;
		(10) the child's needs to maintain a stable schedule, to participate in activities, or to have unstructured free time;
(11) whether the person seeking guardianship has ever acted in a violent manner towards (a) this or any other child, (b) the child's parent or other guardian, or (c) a member of their household;	(13) whether the guardian has ever acted in a violent manner towards (a) this or any other child, (b) the child's parent or other guardian, or (c) a member of their household;	(7) whether the person seeking access has ever acted in a violent manner towards (a) this or any other child, (b) the child's parent or other guardian, or (c) a member of their household;
(13) the effect on the child if more than one person is appointed guardian	(17) the effect on the child if one guardian has sole authority over the child's upbringing; and	(8) the wishes of the person with custody of the child;
(14) the capacity of the person seeking guardianship to cooperate with an existing guardian;	(15) the capacity of each guardian to cooperate or to learn to cooperate in child care;	(12) the capacity of the person seeking access to cooperate or to learn to cooperate with the custodial guardian;

Guardianship	Custody	Access
(12) the connection of the person seeking guardianship with any other guardian;	(12) contact with the child's parent or other guardian;	(9) the relationship between the custodial guardian and the person seeking access;
(15) the methods for assisting cooperation in resolving disputes between guardians and the willingness of the person seeking guardianship to use those methods;	(16) methods for assisting cooperation between or among guardians and resolving disputes and each guardian's willingness to use those methods;	(13) methods for assisting cooperation with the custodial guardian and resolving disputes and the willingness of the person seeking access to use these methods;
(16) any other factor the court considers relevant.	(18) any other factor the court considers relevant.	(14) any other factor the court considers relevant.