

# PRIVATE COMMITTEE HANDBOOK



PUBLIC GUARDIAN  
AND TRUSTEE OF  
BRITISH COLUMBIA

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As a new committee, you will have questions about what is expected of you. This handbook is designed to answer many of those questions and to act as a reference for you during your appointment as committee.

## How to Use this Book

You may want to read through the handbook now to get a better idea about a committee's responsibilities. The handbook contains valuable information - keep it on hand so that you can refer to it should any questions arise during your committee's term.

## Terminology

- **Adult:** A person whom the court has declared mentally incapable of managing his/her affairs and/or his/her person
  - **Estate:** All the money and property owned by a particular person
  - **Committee:** (*pronounced Kaw-mit-TEE*): The person appointed by the court to manage the affairs and/or person of someone who is mentally incapable (the adult). There are two types of committees:
1. **Committee of estate:** the person appointed to manage the adult's financial, business and legal affairs. The adult's estate may include no more than apartment furnishings and pension income, or it may be very large and complex.
  2. **Committee of person:** the person appointed to make decisions related to the adult's physical needs—for example, decisions about health care and where the adult will live.

A committee of estate is different from an executor or administrator of an estate. A committee administers the ongoing financial affairs of someone who is alive as if that person will recover and resume managing his/her own affairs, whereas an executor or administrator is responsible for distributing the estate of someone who has died according to that person's wishes as expressed in a will and/or the applicable laws.

## Private Committee Services

Once the Public Guardian and Trustee (PGT) receives confirmation of your appointment as committee, your file is transferred from our legal department to Private Committee Services (PCS). You will receive a letter from PCS providing you with general information and inviting you to participate in a telephone interview in which we discuss your role and responsibilities as a committee, review details specific to your particular circumstances, and give you an opportunity to raise any questions or concerns you may have. You will also be assigned a Committee Review Officer, who will be your main point of contact with our office, will review your accounts and will respond to any questions or concerns you may have.

## Position of Trust

As committee, you occupy a position of trust. You have been appointed by the Supreme Court of British Columbia to protect the interests of the adult whose affairs you manage. The court relies on your own good judgment of course, but there are also rules and guidelines that set out how you are to perform your duties.

We will discuss these rules in some detail later. For now, we will give a brief description of their sources.

### **Patients Property Act**

This is the provincial law which gives the Supreme Court of British Columbia the authority to appoint committees. The *Act* uses the word “patient” to describe a person who is no longer able to manage his/her affairs (however, please note that we will generally use the word “adult”). The *Act* sets out the procedure for applying for a committee order and defines the authority of the committee. It also gives the court the power to put restrictions on that authority. If the court has done so in your case, these restrictions appear in your order. The *Act* also requires the committee to maintain proper records and to present accounts to the PGT for approval. Click [here](#) to see a copy of the *Patients Property Act* or go to [www.bclaws.ca](http://www.bclaws.ca). You can also see the *Act* at any public library.

### **Public Guardian and Trustee**

The PGT is authorized under the *Patients Property Act* and the *Public Guardian and Trustee Act* to :

- investigate concerns received regarding private committees and others
- review and pass accounts of private committees and set remuneration as applicable
- act as a committee for adults where no other qualified and suitable person is willing to act.

As part of this process, the PGT has developed a set of guidelines and procedures for the passing of accounts. You will find more information in chapter 4 of this handbook. If you have also been appointed as committee of person, we may request information regarding your decision making related to health and residence issues. The PGT may have an additional role if the court has applied specific conditions on your authority.

### **Public Guardian and Trustee Act**

The powers, duties and functions of the PGT are clarified in this *Act*. These include the power to investigate and audit if there is reason to believe a committee is not acting in the best interests of the adult he/she represents, the power to compel the production of records in order to conduct an investigation or audit, and the power to take measures to protect the assets of the adult in urgent cases where there is evidence to suggest the adult’s assets are at risk. It also makes reference to the *Public Guardian and Trustee Fees Regulation*. This specifies the compensation to which the PGT is entitled for providing services such as attending to the passing of accounts, reviewing legal applications or conducting investigations.

### **Trustee Act**

As a committee, you are considered a trustee when you invest money. This means that the *Trustee Act* outlines the approach to take in your investment decision making. The *Trustee Act* provides that a trustee must make investment decisions as a “prudent investor”. This means that committees are required to exercise the care, skill, diligence and judgment that a “prudent investor” would when making investment decisions. This helps to ensure that the adult whose money is invested is protected from unreasonable risk.

### **Common Law and General Principles**

Besides the specific requirements contained in the *Patients Property Act*, there is a general requirement that you act reasonably and prudently and in the best interests, not of yourself, but of the adult for whom you are acting. You are considered a fiduciary and must always place the adult’s interests before your own in managing his/her affairs. If you are in doubt about your situation, you should seek legal advice.

**Court Order**

Your lawyer will provide you with copies of the court order appointing you as committee. This is your direct authority to act as committee. It remains in effect until another court order says otherwise, or until an executor or administrator is appointed after the adult for whom you are committee dies. The order may place certain restrictions on your authority—for example, it may say that you cannot sell any of the adult's real property without getting permission from the PGT.

You may obtain extra copies of your court order from the court registry through which you were appointed as committee. Also, you may wish to obtain a few certified or notarial copies of the order from your lawyer or the registry because some institutions (for example, many banks) require one for their records in order to recognize your authority.

The court order gives you the authority and the responsibility to protect and secure the property and/or person of the adult for whom you are committee. As committee, your actions must be in keeping with the court order.

During the term of your committeehip, you may find that the adult's circumstances change and the terms of the court order no longer enable you to act in the adult's best interests. For example, the adult may require an increased level of care which he/she cannot afford without having access to funds from a restricted asset. In such cases, you may need to go back to the court to have your court order changed and we recommend you seek legal advice.

A sample of a typical court order appointing a committee has been included for your reference as Appendix 1.

## The Authority of a Committee

A committee of estate is appointed to manage the financial, business and legal affairs for someone who is no longer capable of looking after these matters (the “adult”). The committee may be a friend, family member, a professional trustee or business associate, or it may be the PGT.

Once a committee is appointed, he/she has very broad powers. The *Patients Property Act* says:

*“the Committee . . . has all the rights, privileges and powers with regard to the estate of the patient as the patient would have, if of full age and sound and disposing mind.”*

In other words: the committee can do almost anything the adult could do for themselves, if he/she were mentally capable. There are some limits to this power. A committee does not have the authority to:

- contract marriage for the adult (but may continue divorce proceedings);
- vote in elections for the adult;
- draw up a new will or change the existing will;
- make estate planning decisions (e.g., change the designation of beneficiaries on insurance policies or RRSPs, register assets in joint names unless this was done prior to the committee's appointment, or place funds in trust);
- act for the adult in criminal proceedings in which the adult is an accused (but may retain a lawyer for the adult); or
- make a representation agreement, power of attorney or an advance instructional health care directive on behalf of the adult.

Sometimes the court appoints more than one committee (co committees) to manage the adult's affairs. All the committees have equal rights and responsibilities in managing the adult's affairs, are jointly responsible for the management of the adult's affairs, and are expected to work together, unless the court order states otherwise.

Within this book, we usually use the term “committee” singularly, but if you are in a co committee'ship (i.e., more than one committee was appointed), you can replace references to the word “committee” with “co committees”.

In a typical situation, a committee might operate the bank accounts by paying the bills and depositing money coming in. If the adult has been admitted to a care facility for a long term, the committee might arrange for storage of personal belongings and rent out or sell the adult's home. It is the committee's responsibility to ensure that the adult whose affairs he/she manages is receiving adequate care within his/her financial means, both currently and in the foreseeable future.

The committee also ensures income tax returns are filed and looks after any legal matters in which the adult might be involved. These are only a few examples of the wide range of services committees perform.



## **Committeeships, Power of Attorney and Representation Agreements**

You or someone else may have held a power of attorney or been the representative appointed under a representation agreement for the adult who is now the subject of your committeeship order. Powers of attorney and representation agreements give someone the authority to act on another's behalf, as does a committeeship. Unless the court order granting the committeeship states differently, the appointment of a committee by the Supreme Court of British Columbia terminates all powers of attorney and representation agreements relating to the area of authority covered by the committeeship order.

### Power of Attorney

A power of attorney gives someone the authority to act on another's behalf, as does a committeeship of estate. But there is an important difference: a person must be capable of understanding the nature and effect of granting a power of attorney. It may be used where the adult giving the power of attorney is unable – either because of physical disability or because of geographic distance – to perform certain tasks such as depositing cheques or completing a real property transaction.

Another reason people often make a power of attorney is in case they become “mentally incapable” due to illness, disease or accident. In this case, people make a power of attorney with an “enduring” clause that states that the power of attorney may be exercised during any subsequent mental infirmity.

### Representation Agreements

A representation agreement is a legal planning document that enables a person to appoint someone else to make decisions on their behalf. Unlike a power of attorney, a representation agreement can cover health and personal care decisions, and can be tailored to specify when and under what circumstances the agreement will come into effect. Currently, a representation agreement can be customized to cover only certain types of decisions, or general powers (also known as a Section 9 representation agreement), giving the representative the authority to make a broad range of decisions.

If only a committee of estate appointment has been made, the adult may still be able to make a representation agreement for personal and health care decisions.

If you would like further information on representation agreements, please refer to our Guide *“It’s Your Choice: A Guide to Making a Representation Agreement”* (available at the PGT website [www.trustee.bc.ca](http://www.trustee.bc.ca)).

## **Ending a Committeeship**

There are several ways a committeeship can come to an end:

### Adult Becomes Capable

It would be inappropriate to continue acting as committee if the adult is now capable of looking after him/herself. If this happens, you should assist the adult with consulting a doctor to confirm that he/she is in fact capable of making his/her own decisions. Then, contact a lawyer to determine the steps involved to obtain a court order to declare the adult capable and terminate your role as committee.

### Adult Moves to Another Province/Country

If the adult for whom you are committee permanently moves to a region outside of BC, you may find that the new jurisdiction in which the adult is residing does not recognize your authority as committee granted by a BC court and you may need to apply for a similar authority in the new jurisdiction. Should you do this, please provide our office with a copy of the documents setting out your new authority when you have it. You may also need to obtain a discharge of your authority in BC, particularly if your authority was restricted by the BC court.

If you do not pursue an application for authority in the new jurisdiction, you will need to satisfy our office that the adult's departure from BC is permanent in nature. Evidence the adult has been living in the new jurisdiction for a minimum of two years and has no assets in BC will be sufficient to meet this requirement.

Upon receiving notification that the adult has permanently moved to a new jurisdiction, our office may require that you pass your committee accounts to the date of the adult's departure from BC. Your Committee Review Officer will advise you of your account passing requirements.

In circumstances where the adult has permanently relocated to a new jurisdiction, it will be necessary for you, as committee, to make an application in the Supreme Court of British Columbia for an order releasing any requirements for you to post a bond. The PGT will not consent to the release of a bond in the absence of such an order.

If your appointment as committee in BC is not terminated and if the adult returns to live on a permanent basis in BC, your original court order appointing you as committee will continue to be effective. You must advise the PGT that the adult again resides in BC as you will again be required to report to our office on a regular basis.

### You are No Longer Willing or Able to Act

If you are no longer willing or able to act as committee, you should have a lawyer apply for a court order ending your committee and appointing someone in your place. The court will probably require you to have your accounts approved by the PGT up to the date of the order.

### Someone Else is Appointed

If someone else wishes to be appointed committee, that person may apply for a court order appointing him/her and ending your committee. You are required to be notified by the applicant if this kind of application is made. Our office will also be notified of any such application and, if applicable, will need to be served with the new court order. The court will probably require you to have your accounts approved by our office up to the date of the new court order.

### Death of the Committee

Should you die while you are the adult's committee (or, in cases where more than one committee is appointed, upon the death of the last remaining co committee), your executor or administrator is responsible for finalizing your committee accounts, and the PGT becomes committee until another committee is appointed by the Supreme Court. Like any other committee, the PGT has a duty to protect the adult's property, manage the adult's assets for his/her benefit, and, where possible, involve the adult's family and friends in significant decisions. We will continue to act as committee until the court appoints someone else, the adult is declared capable, or the adult dies and an executor or administrator is appointed. If you would like further information on this topic, please refer to our Guide "*When the Public Guardian and Trustee is Committee*" (available on the PGT website at [www.trustee.bc.ca](http://www.trustee.bc.ca)).

### Death of the Adult

If the adult whose affairs you manage dies, your authority as a committee of estate continues until the formal appointment of an executor or administrator of his/her estate. This is stated in Section 24 of the *Patients Property Act*. You should be aware that your authority as committee after that adult's death does not permit you to make distributions from the estate, nor does it permit a change of registration of assets such as real property. You are simply expected to maintain the estate "status quo" until a legal representative (executor or administrator) has been appointed to administer the estate. Usually, the executor or administrator is involved in making the funeral arrangements.

The PGT has no further authority to investigate or oversee your actions as private committee if the adult dies. We will request that you provide our office with a copy of the death certificate. You should contact the PGT to report the death and to obtain further information and assistance to conclude your committee ship.

## Review of your Committee Application

Before you are appointed as committee, all the documents are served on the PGT. Unless otherwise directed by the court, they are also served on the adult for whom you are applying to become committee. The PGT reviews your application and makes recommendations to the court with respect to the medical evidence, bonding requirements and any restrictions to be placed on your authority. It is very helpful for the application to contain a plan for how you propose to manage the adult's affairs.

### Committee Review Officer

Once you are appointed, the PGT will ensure that a Committee Review Officer is assigned to be your main point of contact. The officer:

- provides information and directs you to resources which may assist you in your management of the estate;
- reviews your accounts according to the standards established by the PGT and the courts;
- considers whether or not your actions are in the interest of the adult for whom you are committee;
- makes recommendations regarding the passing of your committee's accounts to the PGT;
- makes recommendations regarding the approval of a fee (remuneration) for your services as committee if requested;
- upon your request, considers and makes recommendations regarding the release of restricted assets and/or the reduction of bonds; and
- considers whether any concerns which may arise regarding your management of the estate warrant an investigation, and if so, conducts the investigation.

### Your Address and Contact Information

The PGT must be able to contact you, not only to review your accounts but also to provide you with information from time to time. It is important you keep us advised of your current address, email address and telephone numbers. Also, let us know if the permanent address of the adult whose affairs you manage changes. You can notify us of these changes by mail, phone, fax or by email through the PGT website at [www.trustee.bc.ca](http://www.trustee.bc.ca).

### Fees Charged by the PGT

The PGT charges fees for reviewing accounts as set out in the *Public Guardian and Trustee Fees Regulation*. These fees are as follows:

	Fee	GST (5%)	Total
Value of the assets of the Estate:	Fee for each 12 month period:		
Under \$25,000.00	-	-	-
\$25,000.00 - \$100,000.00	125.00	6.25	131.25
\$100,000.01 - \$300,000.00	250.00	12.50	262.50
\$300,000.01 - \$500,000.00	325.00	16.25	341.25
\$500,000.00 +	500.00	25.00	525.00

These fees are paid from the estate of the adult whose affairs you manage and are subject to change. Goods and Services Tax (GST) is charged on all fees. Please note there is no fee for reviewing accounts where the gross value of the adult's assets are less than \$25,000. For more information on fees, please visit [www.trustee.bc.ca/fees](http://www.trustee.bc.ca/fees).

### **Investigation of a Committee**

You are required to periodically submit accounts to our office for approval (see Chapter 4 for further information). If accounts are not received in a timely manner, or we have concerns regarding the accounts, or if someone contacts us with concerns about your management of the financial, health or personal affairs of the adult, we have a legislated responsibility to respond. This responsibility is laid out in sections 17 to 19 of the *Public Guardian and Trustee Act*. If warranted, we may conduct an investigation taking into account the nature of the concerns, the health and safety of the adult, and whether the adult's assets are at risk. If appropriate, we may pursue a rescission of your order.

### **PGT as Committee**

The PGT has many different functions, including acting as committee in cases where no one appropriate is willing or able to act. In addition, the *Patients Property Act* provides that the PGT automatically becomes the committee for an adult if the committee dies.

### **How to Contact the PGT**

If you call the PGT and do not know the name of your Committee Review Officer, give the person answering your call the name of the adult whose affairs you manage, and the name of your Committee Review Officer will be given to you.

**Private Committee Services  
Public Guardian and Trustee**  
#700 - 808 W. Hastings Street  
Vancouver, BC V6C 3L3  
[www.trustee.bc.ca](http://www.trustee.bc.ca)

**Phone:** 604.660.1500  
**Fax:** 604.660.4456  
**Email:** [mail@trustee.bc.ca](mailto:mail@trustee.bc.ca)

Toll free calling is available through Service BC. After dialing the appropriate number for your area (below), request to be transferred to the Public Guardian and Trustee (regular office hours 8:30am-4:30pm, Mon-Fri).

Toll free  
Vancouver 604.660.2421  
Victoria 250.387.6121  
Elsewhere 800.663.7867

## **Obtain a Copy of Your Court Order**

Your authority as committee begins when the hearing appointing you as committee occurs and the judge makes the court order. Your authority commences with the date of the hearing, although it may be a few weeks until the court order is entered and issued. When you receive your court order from your lawyer, you should start by carefully reading it. You should be aware of any restrictions or limitations it places on you. A sample of a typical court order appointing a committee is provided in Appendix 1.

The original court order is kept on file at the courthouse. Your lawyer can provide you with copies of your court order. In some situations, you will need certified copies. You can get these at the court registry for a small fee.

The order is the document you use to let others know you are authorized to act on behalf of the adult whose affairs you manage. You need copies of the order to make certain arrangements, for example:

- dealings with banks or the Land Titles Office;
- applications for Canada Pension and Old Age Security;
- dealings with creditors such as Telus, BC Hydro, landlords, and credit card companies;
- cancelling or applying for benefits such as Workers' Compensation; and
- rerouting mail.

## **Providing an Inventory of Assets to the PGT**

Generally, an inventory of the assets and liabilities of the adult is included in the original application material. However, if you have not been able to determine this at the time of the order, an inventory of assets and liabilities should be submitted to the PGT. As per Section 10 of the *Patients Property Act*, any additional assets in excess of \$25,000 should be reported as well to your Committee Review Officer on discovery.

## **Paying the Legal Bill**

The court may order that the costs for all or part of the hearing should be paid from the adult's estate. It is your responsibility to ensure the work performed by your lawyer and the fees charged are reasonable. If you are not satisfied with the account, you may ask the lawyer to have the account taxed before the Registrar. There may be a cost associated with this taxation process.

In some cases, the court may order that the PGT review the legal bills. If this is required in your appointment, please have your lawyer include copies of all legal bills pertaining to the application at the same time he/she sends a copy of the entered court order to our office. Refer to our fact sheet "*Assessing Your Legal Bill*" (available on the PGT at [www.trustee.bc.ca](http://www.trustee.bc.ca)) for further details.

## **Bond Requirement**

A typical committeeship order may require the committee to post a bond for all or part of the value of the assets you are administering. A requirement to post a bond is a routine method the court uses to ensure the adult's property is not at risk. If a beneficiary of a bond should personally suffer financial loss due to mismanagement, the bonding company would pay for the loss and then collect the money from you. The bond is a form of security to protect the adult whose assets you manage. The cost of a bond is paid from the estate of the adult. The premium is based on the amount of the bond. There are a number of insurance agencies that provide bonds and you are free to ask several of them to tell you what the

costs and conditions would be before choosing one. Your lawyer will ensure the bond is approved by the District Registrar and filed with the PGT as part of the process of obtaining the court order.

### **Capital Restrictions**

Some court orders restrict the committee's access to particular assets instead of (or in addition to) bonding. For example, the order may restrict a committee's access to a term deposit without the PGT's written permission or by further court order. Where assets have been restricted, the PGT requires confirmation that the financial institution (or other body) has been sent a copy of the court order.

If there are restricted assets listed in your court order which you would like to deal with in some way, you may need to obtain our office's permission by submitting a request to us in writing, or get a further court order, depending on the terms of your order. Please be advised that this applies regardless of whether you would like to convert the restricted asset to cash or simply move it to a different financial institution. In situations such as the latter, we will typically require confirmation that the new financial institution is aware that the asset is restricted and/or a signed letter of direction from you and the financial institution. This would be your responsibility to obtain for our records.

We provide a written response to all requests we receive for the release or transfer of restricted assets. You may also seek court approval to access a restricted asset.

### **Establishing Bank Accounts**

You must maintain a bank account in the name of the adult for whom you are committee separate from your own bank account, unless you had been operating a joint account prior to the committee'ship. For transparency and ease of record keeping, if the adult had a joint account with you at the time of his/her incapacity, you may wish to consider:

- transferring his/her share of the account to a new account in his/her name alone;
- removing your name from the account; or
- suspending regular deposits and withdrawals so the balance remains unchanged.

If you wish to continue using a jointly held operating account, please be advised that your use of the account should be consistent with how it was used prior to the committee'ship. For example, if the account was registered jointly but had always been used solely for the adult's benefit, then it should continue to be used in that way.

You may find it makes your job easier if you use a bank account that provides a monthly statement and returns all cheques to you.

You may wish to do the adult's banking online. This is perfectly acceptable so long as you maintain adequate records, including hard copies of all statements and documentation to substantiate all transactions.

If there is more than one committee and the order permits it, you can decide whether you want only one person to sign documents related to the account (e.g. cheques), or if you want to always have more than one signature on the accounts. Make these arrangements with the financial institution. You may choose to set up a separate account for savings and investment purposes, but we suggest you do not use more bank accounts than necessary as it will only complicate your job.





## **Setting up your Records**

In most cases, you present your first Account Submission Package to the PGT one year after your appointment (for more details, see the next chapter), but it is important that you set up your records properly now so you will have all the necessary information when you need it.

You are not expected to have any experience preparing trust accounts. You can hire a bookkeeper or an accountant to assist you in the setup of your committee record keeping, and also to maintain these on an ongoing basis for you if you like. The reasonable costs of a bookkeeper or accountant can be paid out of the account of the adult whose affairs you manage.

In order to make your record keeping easier, instead of making cash withdrawals, we recommend you use cheques or direct debit as a method of payment wherever possible to help you keep track of expenditures. Please note if you do make cash withdrawals (at a bank machine, for example), you are still required to document what the cash was used for, and to obtain and retain receipts.

If you have a computer, you will likely find it helpful in your record keeping. You could purchase a software program such as Quicken or Microsoft Money in order to keep track of all transactions. Alternately, you could set up a journal using spreadsheet software such as Microsoft Excel. The reasonable cost of relevant computer software is payable from the estate, as may be the purchase of a basic computer if it will assist you in your role as committee. If you choose to maintain computer based records, we strongly encourage you to back up your files frequently and install appropriate security software (e.g., antivirus, antispyware, internet security, etc.).

Another method of record keeping is to set up a paper based journal to keep track of your cash transactions. Ledger paper is designed for this purpose and is ordinarily available from office supply stores.

Whatever method you choose, it is important you maintain documentation substantiating all the transactions you make as committee. You may find keeping a file folder or envelope of receipts for all transactions in a particular month useful, or you may wish to sort your receipts by expense type (e.g., care facility, utilities, property taxes, etc.). We encourage you to find the system which works best for you. As you may be asked to substantiate your expenses as part of your account passing process, we recommend you keep your records as complete, organized and up to date as possible.

Please note that if any assets are specific gifts in a will and the committee decides to sell or otherwise dispose of them, the committee should keep records of the amount of the sale proceeds (or fair market value) of the item, for the future reference of the adult's executor or administrator.

### **"To Do" List**

Please see Appendix 2 for a sample "to do" list for new committees.

As committee, you must present your accounts to the PGT for approval at intervals set by our office. These intervals are referred to in correspondence received from our office. Your first reporting period usually ends on the last day of the month that is one year from the date of your appointment.

Failure to comply with reporting requirements may result in rescission of your appointment.

For example: if you are appointed on November 18, 2010, your first reporting period begins on that day and typically ends on November 30, 2011. The subsequent reporting period would begin on December 1, 2011 and typically end on November 30<sup>th</sup> of a specific year after that as directed by our office in correspondence to you. These periods usually vary between one and three years in length.

### **Submitting your Accounts**

You must use standard forms, provided by the PGT, to present your accounts. These forms are contained in the *Private Committee Account Submission Package*, which you can print from the PGT website at [www.trustee.bc.ca](http://www.trustee.bc.ca). If you are not able to access our website, you may contact our office and we will mail you a copy.

### **Account Submission Package**

The forms include detailed instructions on how to complete them. Be sure to include the information requested, along with photocopies of documents referred to within the forms. Do not send originals to our office. If you wish, you can hire a bookkeeper or an accountant to assist you in filling out the forms. It is important to remember to include a signed and witnessed affidavit and the account review fee. *If your accounts are not submitted in an acceptable format, they will be returned to you for proper completion.*

### **Other Required Documents**

When you present your *Account Submission Package*, the PGT requires you to provide photocopies of documentation that substantiates the market value and the adult's ownership of the assets and liabilities held at the end of the reporting period. If it is your first reporting period, you must also provide this documentation for assets and liabilities held at the date of your court order. Please refer to the *Account Submission Package* for examples of documentation we will accept.

You are also required to provide copies of the adult's T1 Income Tax Return and Notices of Assessment for each year since your last report (or since your appointment as committee).

While you are not required to provide details of the adult's expenses as part of your Account Submission Package, you are still required maintain records that keep track of these expenses and receipts to support them. In some cases, we may request information about the adult's expenses in order to pass your accounts.

Don't forget to sign the affidavit before a notary public, lawyer, or Commissioner for Taking Affidavits. You must also include our account review fee as outlined in your package, when applicable.

## **Your Fee (Remuneration)**

You may be entitled to a fee for your services as committee, which is paid from the estate you are managing. The PGT sets the amount of the fee when your accounts are passed. You cannot take this fee until we send you your accounts passing letter and certificate specifying how much you are entitled to take.

## **Certificate of Passing of Accounts**

You will receive a certificate when the PGT has examined and passed your accounts. The certificate will also state the fee to which you are entitled to be paid for your services, if you have requested remuneration.

If we are unable to pass your accounts, then we may refer you to the court for a “Registrar’s Passing”.

## **How we Calculate your Remuneration**

The remuneration is based on five per cent of income, plus a set fee for asset management. If you have done additional work that is out of the ordinary which you feel warrants a fee above and beyond this, please provide details in writing when submitting your *Account Submission Package* and we will consider your request.

The fees that are set for committees are mainly to compensate you for your time in performing financial administration duties and managing the assets of the adult for whom you are committee. If you fail to perform these duties in a reasonable manner, your remuneration may be reduced or denied.

If you are not satisfied with the awarding of remuneration to you by the PGT, you have the option of going to court for a Registrar’s Passing.

## **Your Income Tax**

When filing your personal Income Tax Return, any fee you receive as committee is taxable as income in the year you receive it. You may take the fee any time between the time it is approved (as set out in your certificate) and the end of the next reporting period.

## **Discretionary Reporting**

After we have passed your first set of accounts, we may approve you for discretionary reporting status if the adult for whom you are committee has a very limited income and minimal assets. This means we do not require you to prepare the *Account Submission Package* at regular intervals. However, you are still required to act as a fiduciary in your management of the adult’s estate and you must keep detailed records. We may still require reporting in the future if concerns arise about your management or if the financial situation of the adult for whom you are committee changes, so it is important that you continue to maintain adequate accounting records (including backup documentation such as statements and receipts) that substantiate the assets, liabilities, income and expenses of the adult.

Even if you qualify for discretionary reporting, you are required to inform our office if the adult for whom you are committee:

- has a change in circumstances, including an increase in income or assets, such as an inheritance or windfall;
- moves or has a change in contact information; or
- dies.

You must also notify us if your contact information changes or you are no longer able or willing to act as committee.

Finally, please note that you are not entitled to remuneration when accounts have not been passed by the PGT or the Registrar.

You need to keep a reasonable amount of money in the adult's bank account to take care of routine needs. Any amount over and above that should be invested. The investments you make must be reasonable and proper, given the circumstances of the adult whose affairs you manage.

### **Prudent Investor Requirement**

The *Patients Property Act* says that, for the purposes of investing, all committees are trustees under the *Trustee Act*. The *Trustee Act (Section 15)* establishes the standard of care for trustees. This standard of care is known as that of a "prudent investor". Therefore, committees are required to exercise the care, skill, diligence, and judgment that a "prudent investor" would when making investment decisions. As a prudent investor, you are required to develop an investment plan or strategy and you should put it in writing. The definition of the prudent investor has generally evolved to mean:

- making necessary investments that a prudent investor would make to protect capital and provide income;
- developing risk and return objectives that are reasonable and suitable, given the size of the overall portfolio, and the circumstances of the investor;
- ensuring reasonable diversification of the type and class of investments;
- acting with prudence when delegating investment authority to an agent;
- incurring only reasonable and appropriate costs; and
- adopting a balanced approach to managing investments.

It is always important to remember you are not investing your own funds, but the funds of the adult. As committee, you have a responsibility to ensure you have invested in a similar manner to that of the adult, should the adult be capable of managing his/her own affairs.

Given the level of care that is required when managing investments, you may wish to seek the assistance of an investment professional.

For further information, refer to our fact sheet "*Your Investment Decisions*" (available on the PGT website at [www.trustee.bc.ca](http://www.trustee.bc.ca)).

### **Investment Risks**

There are a number of financial risks associated with investments, especially when you are managing investments for someone else. Should an investment loss occur while you are acting as committee, you could be held personally liable for this loss.

The *Trustee Act* states that you cannot be held liable for an investment loss if your conduct that led to the loss conformed to an investment plan or strategy, comprising reasonable assessments of risk and return that a prudent investor would have adopted under similar circumstances. A committee should make every effort to maintain overall portfolio risk at a reasonable level when developing an investment plan or strategy for the adult's investment.

For example, the need for stable income would suggest a strategy that limits fluctuation in asset values. The adult's estate must not be exposed to unnecessary risks. A prudent investor only exposes the adult's estate to the level of risk that is associated with the investment return required to achieve the adult's financial objectives.

Critical ways to reduce risks include:

- develop an investment plan in writing;
- seek professional assistance;
- diversify when making investments;
- invest in a conservative manner; and
- monitor investment performance on a regular basis.

This section highlights the importance of developing a written investment plan or strategy, the need to seek the assistance of a qualified professional investment adviser, and the importance of monitoring the performance of investments you are responsible for managing.

### **Professional Assistance**

You have a legal obligation to manage the adult's affairs as a prudent investor. However, you are not expected to have the investment knowledge or experience that most professional investors possess. The *Trustee Act* permits you to delegate your authority to manage the adult's investments to an agent. As committee, you can delegate your investment responsibility to an agent once you have determined the investment objectives and if you exercise prudence in:

- selecting an agent;
- establishing the terms and limits of the authority delegated;
- acquainting the agent with the investment objectives; and
- monitoring the performance of the agent to ensure compliance with the terms of the delegation.

There are a number of organizations and individual professionals that provide investment advice services and these include brokerage firms, financial advisers and financial planners. When choosing an agent, you want to be sure that they are knowledgeable, reputable, dependable and understand the legal requirements of trustees to act as prudent investors. You want to ensure that the fees being proposed by potential investment advisers are both competitive and reasonable. Make sure you ask for an explanation of all fees and commissions, as some investment products, such as mutual funds and segregated funds, may have hidden management fees (load fees and administration fees) triggered if the investments are sold within a certain period of time.

### **Identify the Adult's Financial Objectives/Goals**

The first step in developing an investment plan is to determine the financial objectives of the adult whose affairs you are managing. To do this, you need to know what you are managing. You should already have a pretty good idea of the adult's assets and liabilities. Using this information, you can create a **net worth statement** (assets minus liabilities equals net worth) which will help you identify what assets should be invested.

Next, you should prepare a **budget** outlining the adult's current income and expenses to determine if there is **positive cash flow** (income exceeds expenses) or **negative cash flow** (income is less than expenses). If there is a negative cash flow, this means you will have to use capital assets to meet the

day to day management plan for the adult. Over time, this could cause the funds to run out, and a contingency plan for this event should be in place. It is always good practice to establish a budget as it provides a financial road map that you can follow during your committee ship.

Once you have an understanding of current income and expenses, you should try to identify any significant costs that may be incurred in the future. Common examples include additional medical costs, caregiver/companion costs, travel costs, acquiring a specialized vehicle, renovations, and the purchase of a residence—usually for a younger adult. Some of these items can be covered by adult's income; others are considered **capital expenditures**, as the expense will generate an asset (a house or car, for example) and may require the disposition of other assets. Other factors to consider include income tax implications, the adult's time horizon, his/her risk tolerance, and what he/she would be comfortable with if investing for him/herself (taking into account any previous investment preferences). After considering these items, you should have better understanding of the adult's financial objectives.

### **Develop an Investment Plan/Strategy**

After you have identified the adult's financial objectives, the next step is to determine the investment income required to meet these objectives and then develop an investment plan/strategy to achieve these goals. Key considerations that should be incorporated into any investment plan are:

- current economic conditions;
- current market conditions;
- diversification;
- liquidity of the investments (easily convertible into cash); and
- reasonableness of the investment plan.

It is strongly recommended that you seek professional assistance from a qualified investment advisor to assist with the development of an investment strategy.

### **Investment Options**

As a prudent investor, you are able to invest in any security or investment that conforms with your stated investment plan/strategy. Some of the more common investment products or securities in which you can invest funds include, but are not limited to:

[Debt Securities](#): Guaranteed Investment Certificates (GICs), Treasury Bills (T-bills), Savings Bonds, Bonds, Debentures

[Equity Securities](#): Common Shares, Preferred Shares

[Investment Funds](#): Mutual Funds, Segregated Funds, Closed End Investment Funds, Labour Sponsored Investment Funds

### **Insured Deposits**

We strongly recommend that you deposit funds only with banks, credit unions and other financial institutions who are members of the Canada Deposit Insurance Corporation (CDIC), or the Credit Union Deposit Insurance Corporation (CUDIC). Deposits in member institutions are automatically insured against loss up to certain limits. The insurance limit for banks and credit unions is \$100,000. Many institutions offer various companies within their institution that enable coverage to be over \$100,000. You should be aware of what amounts are covered by the institution in which you are investing and document your rationale for investing anything over that limit.



## **Personal Loans**

Extending personal loans to yourself or related individuals (members of your family) is an inappropriate investment because it is a direct conflict of interest. Committees are placed in a position of trust to manage someone else's affairs and they cannot benefit in any way from the funds they are responsible for managing. As well, committees are accountable for the decisions they make and should make every effort to minimize the risk of investment loss when managing an adult's affairs. The PGT generally does not approve loans to committees and/or their family members. If you do wish to make such a loan, the loan must be approved in advance as part of the initial court order, or approved in advance by way of court order, specifically authorizing the loan.

## **Real Property**

Making real property investments for the purpose of generating rental income or for development purposes can be very risky. Such investments require large sums of capital while the expected investment return hinges on the market value of the real property increasing (price speculation). For most committees, this type of investment would not be considered prudent. Should you wish to invest in real property, please contact your Committee Review Officer to discuss the matter.

The person for whom you are committee may already own real property or may require a home to live in. Maintaining or purchasing a home for the adult to reside in can be an appropriate decision.

## **Gold, Art, Other Investments**

Investing in precious metals, art and antiques is not considered to be a prudent investment decision for most committees. These assets are volatile in nature and usually do not produce any income for the use of the adult. Such assets currently owned by the individual for their personal enjoyment should not necessarily be sold. However, such investments are usually very speculative and the items may be difficult to sell in a timely manner. Remember, as a "prudent investor" you need to develop an investment plan that balances risk with an appropriate investment return.

## **Further Investment Education**

We suggest visiting the British Columbia Securities Commission website (<http://www.investright.org>) for further information on investments. There is a great deal of information provided on how to start investing, definitions of different investments and how they work. While this information is written to assist individuals with managing their own investments, you can use this in your role as committee.

## **Review of Investments**

When you present your accounts for review, the PGT considers the investments you manage as committee. You may be asked to provide a copy of your investment plan or strategy. You need to provide statements detailing the investments you are managing at the end of your reporting period. Your Committee Review Officer reviews this information to ensure that you are managing the adult's investments in a prudent and professional manner.

If you have invested funds in a manner that does not appear to be prudent, you may be liable for the losses incurred by the adult's estate. The PGT cannot pass your accounts if the investment decisions are inappropriate. This may result in a possible rescission of your appointment as committee.

## **Any Questions, Please Call**

Managing investments can be a complex and intimidating responsibility. Please contact your Committee Review Officer with any questions you have about investments and your committee.

In this section, we discuss issues that may arise in your day to day management of the adult's affairs and when you must exercise your discretion or judgment for the benefit of the adult for whom you are committee and his/her dependants. It is important to think about the adult's wishes and prior wishes when making decisions. If you have concerns about a particular decision, contact your Committee Review Officer. He/she will not make the decision for you, but may be able to offer some advice on how to proceed, based on experience in similar situations. The following are examples of suggestions for how to deal with certain decision making events.

### **Act Reasonably and Prudently**

As we have already discussed, your duty is to act reasonably and prudently and in the best interest of the adult whose affairs you manage. Remember to manage the individual's money with a cost conscious approach. Obtain a few prices for comparison when purchasing larger items or hire a professional to assist you and retain these quotes in your records.

### **If You are the Spouse**

If you are committee for your spouse, you do not have to separate out what belongs to each of you. You are able to continue to live as you have done, in your family home, using all of your shared household furnishings, vehicles and so on, as long as it is fiscally prudent to do so.

### **Dealing with the Adult's Residence**

A committee is often appointed when someone is in a hospital or other care facility. That person may still own a home and you, as committee, may have to decide whether to sell it. In making that decision you should consider:

- What does the adult wish to have done?
- Is the adult likely to live in the home again? You could ask his/her doctor for a prognosis.
- Should the home be rented? (Note there may be income tax implications in following this course of action.)
- Do other members of the family, who have legitimate claims for support, need the home to live in? Legitimate claimants are usually limited to the spouse and dependant children
- Does the adult need the cash from the sale to meet his/her expenses?
- Can the adult afford the taxes and other costs of maintaining the home?
- What are the views of the family members?
- Is the home specifically bequeathed to someone in the will?

If you decide to rent out the home, we would expect you to do so for an amount equivalent to "**market rent**" - a fair rent given the location and similar rentals in the neighbourhood. If you want to charge less than market rent to somebody living in the home, you should discuss this with your Committee Review Officer. You should have a formal rental agreement with the tenant—you can purchase these from some stationery or bookstores or obtain one from your local BC Residential Tenancy office. Their website is [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca). You may need to provide this tenancy agreement with your *Account Submission Package*.

If you decide to sell the home and the PGT is required to approve the sale, you must get an appraisal from a qualified appraiser (not a real estate agent) and sell the property for fair market value. If you wish to sell for less than the appraised value, the property must have had reasonable market exposure. Selling privately without using a realtor to save costs is not necessarily the action of a prudent investor. It is important to check your court order to see whether you must get a



further court order authorizing you to sell the property. For example, your order may state:

*“This court further orders that the committee be restricted from disposing of or encumbering the real property without further court order on notice to the PGT.”*

If you require a further court order, you should seek the assistance of a lawyer to prepare a court application. You may wish to request a lawyer experienced in committee, estate or conveyancing matters.

If your court order states that you simply require the permission of our office to sell the property – for example, *“this court further orders that the committee be restricted from disposing of or encumbering the real property without the prior written consent of the PGT”* – then we require certain documents from you. You need to provide our office with:

- a copy of the formal appraisal (not more than six months old);
- a copy of the contract of sale; and
- a letter requesting our approval to the sale which also includes the name and fax number of your lawyer or notary public and real estate agent.

When you write up the contract of sale, be sure to include a subject clause “subject to the approval of the PGT”. Our office requires a minimum of five clear working days to respond to your request for approval.

For further information on selling real property belonging to the adult, refer to our fact sheet *“Sale of Real Property”* (available on the PGT website at [www.trustee.bc.ca](http://www.trustee.bc.ca)).

## **Vehicles**

Vehicles depreciate very quickly and safe storage and insurance is expensive. If the adult is no longer able to drive, but owns a vehicle, you should probably sell it unless there are good reasons to keep the vehicle. Expenses on the vehicle should be paid only if it is being used for the adult’s benefit or for his/herspouse and/or children under the age of 19.

## **Furnishings and Personal Effects (that are being used by the Adult)**

You may need to consider storing personal items if it is fiscally reasonable to do so. If specific items have been identified in a will, you should keep this in mind when making your decisions to retain or sell them. If you unnecessarily sell such an asset, you could be challenged by the individual who is named in the will as entitled to this asset.

Again, consult with the adult and with the family for their views and consider whether the proceeds of sale are needed for ongoing expenses.

Jewellery, art and other items may have been listed at a specific value in the Affidavit of Kindred and Fortune filed in support of your application for committee. You should have an appraisal done of any items valued at more than \$2,000 prior to selling them to ensure you receive fair market value.

It would be generally expected that you keep items of memorabilia or sentimental value which may have no actual market value available for the adult’s use.

## **Bank Accounts**

Inquire as to the best bank account options and immediately establish an account in the name of the adult whose affairs you manage if one does not already exist (See the earlier section in this book, titled "Getting Started".)

## **Joint Accounts**

It is improper to establish a joint bank account with the adult whose affairs you manage (with yourself or a third party). If the account was set up prior to the committee's appointment, you may continue to use the account as usual. If the account was established as a joint account prior to the committee's appointment for estate planning purposes, then it is appropriate to continue to operate it as in the past. If the account had always been used solely for the adult's benefit, then it should be continued to be used in that way.

If there is a pre-existing joint account with another person and it becomes apparent the joint account holder is acting inappropriately, it is your responsibility to determine whether to maintain this arrangement.

Joint accounts may carry a right of survivorship. This means that if you change the registration to make the account joint with the adult and yourself, and the adult for whom you are committee dies, the entire account would go to you. As committee, this would be considered as a conflict of interest. You must not put yourself in a position to benefit from the estate you are managing. It is not appropriate to change bank accounts to joint ownership when they were not already held that way. If you are creating the joint account for the ease of managing funds, and for the ease of estate administration, this is clearly against the rules contained in the *Patients Property Act* as well as at common law. Ensure your financial institution is aware of the needs you have as committee to have the account available to you as signatory, but not as joint owner.

## **Income**

All of the income of the adult whose affairs you manage should be deposited to an account in his/her name as soon as it is received. We recommend availing yourself of the ability to have regular sources of income direct deposited to the adult's bank account. It will assist you in your record keeping, and ensure income payments are not lost.

## **Expenses**

You may pay all of the reasonable expenses from the adult's account. This includes the cost of care in a hospital or other facility, homemaker's fees, Meals on Wheels, Medical Services Plan premiums, accommodation, food, utilities, bus passes and many other items paid for the benefit of the adult. Again, with utilization of the banking facilities, many of these payments may be automatically set up.

When considering whether an expense is reasonable, ask yourself: Is it necessary? Is it in the best interests of the adult whose affairs you manage? Is the amount being charged within the normal range for that item or service? The intent is not focused on preserving the estate, but rather maintaining or enhancing the quality of life and reflecting the wishes of the adult whenever possible.

If the adult resides in a care facility, maintain their comfort fund account at a dollar level that provides the adult with all of their needs. The facility management should be able to recommend a minimal amount for you to keep in the comfort fund, based on the individual's specific needs. You are responsible for monitoring the use of this fund. You may reimburse yourself for out of pocket expenses you have incurred on his/her behalf if they are reasonable and you have the receipts. For example, you may reimburse yourself for gas or car mileage, stationery and record keeping supplies. You may not reimburse yourself for time spent in performing your committee functions which assist the adult. This is

covered through the remuneration set by the PGT.

### **Caregiving Services**

If arranging caregiving services for the adult, consider the advantages and disadvantages of using agencies versus entering into an employment relationship with an individual. If you are providing caregiving services to the adult and you wish to receive compensation from the adult's estate for doing so, you may be required to obtain authorization from the court through a specific court order.

It is our practice to review these proposals keeping in mind what a professional service provider would charge as well as the financial capacity of the adult to pay such expenses.

### **Pensions and Benefits**

If the adult whose affairs you manage qualifies for any pensions or other benefits, you must apply for these on his/her behalf. You are able to claim for arrears of payment in certain instances where the adult has failed to make application for benefits to which he/she may be entitled. Again, the use of direct deposit to the adult's bank account will simplify your accounting and save you time in making deposits.

### **Income Tax**

You are responsible for filing Income Tax Returns on behalf of the adult whose affairs you manage. This includes filing any overdue returns for prior years. If there are penalties involved, you may wish to let Canada Revenue Agency (CRA) know about the individual's incapacity as in special circumstances, under their fairness and taxpayer relief provisions, they will sometimes forgive all or part of any penalties and interest charged. With your order, you can request that CRA give you the prior filings and T-slips of the adult, a way to ensure you have captured all the current sources of income for the adult. You can hire a professional to prepare the Income Tax Returns, and the cost of this is payable from the adult's account.

Even if the person for whom you are committee has no taxable income, it will often be to your advantage to file an Income Tax Return. Filing a tax return allows you to:

- Claim refundable tax credits which are refundable even if you have no taxes payable.
- These include the working income tax benefit and the BC sales tax credit;
- Apply for the GST credit and the BC low income climate action tax credit.
- Apply for the Canada Child Tax Benefit (CCTB), which is available to eligible families with children under 18 years of age.
- Automatically renew the Guaranteed Income Supplement (GIS), which is available to low income seniors living in Canada.
- Qualify for reduced per diem rates at government funded care facilities.

### **Business Affairs**

If a business forms part of the estate, you need to exercise your discretion in the many business decisions having to be made. If the adult owns the business, you may choose to sell the business—especially if the adult was a key figure, indispensable to its operations. Or, you may choose to continue operating the business and to hire help for the things you are unable to do. It is a good idea to seek an accountant's assistance with the business records, financial statements and tax preparation. You may wish to seek legal advice with respect to the adult's involvement especially if the adult is a director of a company. If you decide to sell the business, you will want to consult a lawyer or accountant with experience dealing with sales of this type of business.

## **Interest in a Trust**

If the adult whose affairs you manage has a trust, you need to determine the nature of their interest in the trust. Many trusts are discretionary, both as to income and capital. You should obtain a copy of the Trust Deed, and it is your responsibility to ensure the trustee does his/her job in dealing with the benefits to which the adult is entitled. You may be required to submit the financial statements related to the adult's interest in the trust along with your committee accounts when they are due. As committee, you have an obligation to review the accounts of the trustee on a regular basis, insofar as they reflect benefits to which the adult may be entitled.

## **Legal Affairs**

As committee, you are the proper person to bring and defend lawsuits on behalf of the adult for whom you are committee. This includes any action taken under the *Wills, Estates and Succession Act*, the *Family Law Act*, etc. It also includes advancing any personal injury claims. You need to balance the costs, likelihood of success and the adult's wishes before pursuing any action. For example, if he/she were being sued for financial support in a divorce case, you would continue with the lawsuit on his/her behalf. You must be careful not to get involved in unnecessary lawsuits. Please note that you must retain a lawyer if acting as "litigation guardian" for the adult. If the adult is named as executor in someone's will and the individual dies, the committee can act on the adult's behalf in the role.

You may discover the adult has been taken advantage of by other parties prior to your appointment. If the adult made a gift or sold something for less than its full value to someone who knew they were dealing with an incapable person, the transaction is legally of no effect. If you are concerned that this has happened, you should probably get legal advice with respect to the remedies available.

## **Assisting Dependant Family Members**

As committee, you should consider the interests of any legally dependant family member.

If the adult has been supporting his/her spouse or another family member, you may continue to pay the costs of maintaining that dependant if:

- the adult for whom you are committee can afford it, after first covering his/her own expenses; and
- the dependant person has insufficient income to maintain his/her standard of living.

You should contact the PGT for approval before beginning such payments, particularly if the payments could be perceived to put you in a conflict of interest. It may be a good idea to have the court approve such payments, particularly where conflict is involved.

## **Maintenance for a Spouse**

If you are your spouse's committee and you were supported by him or her before the committee ship, you should let the PGT know that you intend to continue to use your spouse's funds for your own support. This statement should be contained in the material filed with your application to be appointed. You can have a budget approved so that you can pay for your personal expenses without the need for a detailed accounting.

## **Gifts to Family Members**

The continuing cost of small gifts to family members – the kind of gifts that have been part of a family tradition (for example, birthdays) – may be paid from the account of the adult, providing he/she can afford it and you feel they would wish to continue the tradition.

You should get court approval before giving substantial gifts or charitable donations on the adult's behalf. If the level of gifts is determined to be unreasonable, you may have to reimburse the adult personally, or refer to the court to have the gifts approved.

### **Conflict of Interest**

Whenever your own personal interests conflict with the best interests of the adult for whom you are committee, you will need approval from the PGT, or even from the court, **before** acting.

For example, if you are committee for your brother and you are contesting your mother's will, the law sees your brother and you as competing for as big a share as possible of the estate. In a case like that, you have a conflict of interest since your claim on the estate conflicts with your brother's. Consequently, you will need to get prior approval before taking any action.

A conflict also exists when you stand to benefit from certain legal or financial actions of the adult whose affairs you manage. For example, if you were contemplating purchasing his/her house, you would first need approval.

### **Hiring Professional Help**

It is your responsibility to manage the financial affairs of the adult for whom you are committee, but there may be aspects that are too complex for you to handle or outside of your particular area of expertise. In some cases, it is appropriate to hire a professional and to pay for these services from the adult's funds.

For example, you may pay an accountant to prepare Income Tax Returns or to prepare your accounts for approval, or you may hire a bookkeeper to help with your monthly record keeping. If the adult owns a large portfolio of securities or an interest in a business, it may be appropriate to hire an investment/business advisor to provide you with professional assistance.

When purchasing professional services, remember to ensure the prices you are paying are reasonable for the services provided. If the PGT determines the cost of services contracted are unreasonable, or that the service is one that a committee would reasonably be expected to provide, you can be held liable for the cost or it may be deducted from any remuneration to which you are entitled.

It is not expected or required that you undertake the expense of having your accounts "audited" or "reviewed" by an accountant.

### **Writing a Will**

Even though the adult whose affairs you manage has been declared "incapable of managing their affairs" it is possible they could execute a legal will. The level of capacity for writing a will – called "testamentary capacity" – is different from the level of capacity required under the *Patients Property Act* to declare someone incapable of managing their affairs. The adult should speak with a lawyer who will determine whether the adult has testamentary capacity. The lawyer may request a medical opinion. The desire to make the will, and its contents, must come from the adult and not from the committee.

### **Marriage**

If the adult wishes to get married, it may be important, if there are concerns, to obtain advice from both his/her doctor and a lawyer to see if he/she is capable of entering into such an agreement. The

doctor will assess whether the individual understands the meaning of a marriage agreement, and the lawyer will provide the necessary legal advice. Not every situation will require a full assessment for this purpose.

The *Patients Property Act* is the legislation that allows for someone to be appointed committee of person for an adult. Over the years, the courts have handed down a number of decisions helping to provide clarity regarding the role and duties of a committee of person. In addition, there are a number of pieces of legislation related to personal decision making on behalf of an incapable adult. These Acts can be used as a guide when making proper and prudent decisions, especially the *Health Care (Consent) and Care Facility (Admission) Act*.

The role of a committee of person involves making decisions regarding an adult's personal care, where they are to reside, health care decisions, and who has access to visit with the adult. When a committee of person needs to make a decision, he/she should consult, to the greatest extent possible, with the adult to determine his/her current wishes. The committee may also wish to consult with family members and others who may have information valuable in coming to the best decision. In general, a committee of person should only consider making decisions the adult is not capable of making for him/herself. In having the legal authority to make decisions regarding very personal matters, it is extremely important that a committee of person make such decisions based on the adult's wishes and beliefs, and in his/her best interests.

### **Health Care Decisions**

When a person requires medical treatment, be it medication or surgery, health care providers are required by law to seek informed consent. A committee of person has the legal authority to make health care decisions when a health care provider determines that an adult is not capable of making such decisions for him/herself. The *Patients Property Act* does not specify how a committee of person is to make a health care decision. A committee is a fiduciary and therefore is required to make decisions in the adult's best interests.

The *Health Care (Consent) and Care Facility (Admission) Act* provides the legal basis and guidelines for making substitute health care decisions on behalf of incapable adults. When making a decision, a temporary substitute decision maker is required to base his/her decision on the following three step process:

- Any known instructions or wishes made by the adult when the adult was capable
- If there are no known prior instructions or wishes made when the adult was capable, the decision is to be made in accordance with known applicable values and beliefs
- If there are no such known values and beliefs then a decision is to be made in the adult's best interests as defined in the *Act*.

Given the similarity in responsibilities between temporary substitute decision makers and committees, it is suggested that committees use the provisions of the *Health Care (Consent) and Care Facility (Admission) Act* as a guide when making health care decisions.

During your appointment as committee of person, you could be asked to make a number of health care decisions. The majority will likely be for minor treatments such as medications and routine medical



procedures. However, you may be asked to make a major health care decision for the adult for whom you are committee and these decisions could have very serious implications.

When faced with any decisions, you may wish to take the following steps:

- Have the doctor explain all the treatment options available, and the risks and the benefits associated with each of them
- Speak to the adult directly regarding any wishes he/she may have
- When appropriate, consult with family members and friends as to the adult's prior wishes, values and beliefs
- Consider seeking a second opinion
- Maintain a diary or journal of all the information, events and dates related to making a key decision.

### **Restricted & Prohibited Treatments**

Under the *Health Care (Consent) and Care Facility (Admission) Act* there are some types of health care that temporary substitute decision makers are restricted from making, requiring a specialized consent procedure, and others that are prohibited. As committee of person you have authority to make these decisions but if there is disagreement you may want to go to court for approval.

#### Restricted Treatments under the Act include:

- abortion unless recommended in writing by the treating physician and at least one other medical practitioner who has examined the adult; and
- electroconvulsive therapy unless recommended in writing by the treating physician and at least one other medical practitioner who has examined the adult.

#### Prohibited Treatments under the Act include:

- psychosurgery;
- tissue donation to another individual or for research purposes;
- experimental health care involving foreseeable risk to the adult that does not outweigh the benefits;
- participation in a medical research program that has not been approved by an appropriate ethics committee; and
- any treatment, procedure or therapy that involves using aversive stimuli to induce a change in behaviour.

#### Non therapeutic Sterilizations:

Sterilization that is not medically necessary is a prohibited treatment for any substitute decision maker, including committee of person, because it is not deemed to be therapeutic and is therefore outside the ambit of the *Health Care (Consent) and Care Facility (Admission) Act*. In 1986, the Supreme Court of Canada was asked to rule on the [Eve case](#) to determine whether a committee or the court could give a legally valid consent for a non therapeutic sterilization.

The Supreme Court of Canada decided that non therapeutic sterilizations could never be a decision for the benefit of a person who is incapable of consenting themselves. This means that under the current law in Canada, no one can give consent on someone else's behalf to a sterilization that is not medically necessary (not a parent, committee, doctor or hospital).

## **Residential and Facility Admission Decisions**

As committee of person, you have the legal authority to make decisions about where the adult is to reside. When managing this particular aspect of the adult's life, you should be asking yourself how this person is currently managing, whether his/her current setting is appropriate, and what plans are there for the future. These types of decisions can be extremely difficult to make, especially when someone may need to move from his/her home. When making these decisions, a committee should consider:

- the adult's wishes;
- the best interests of the adult;
- the level of care/support the adult requires;
- the level of support that is available;
- the level of risk associated with the location;
- input from family or friends; and
- financial considerations.

There may not always be a clear choice in making these decisions, and you may struggle trying to find the appropriate balance between the adult's wishes, his/her best interests, an acceptable amount of risk, and affordability. Make sure that you seek advice from the adult's care providers (e.g., doctor, nurse and/or social worker) as they can be of great assistance with these decisions.

## **Access Decisions**

A committee of person has a duty to ensure the adult's well being by balancing personal safety and security with emotional support and contact with supportive family and friends. A committee of person may have to exercise this particular aspect of their legal authority. Having the adult determine who he/she wishes to visit is usually the best practice and visits from family and friends are usually an appreciated event.

In some situations, it may be necessary to limit or restrict someone's ability to visit with the adult for whom you are committee of person. A decision to limit or restrict someone's access to visit with a person should only be made when such visits subject the incapable person to potential harm or risk.

When making such a decision a committee should consider the following:

- the wishes and best interests of the adult;
- alternative arrangements that may provide a safe environment for an individual to visit the adult;
- advice of the adult's doctor and care provider; and
- the level of risk or harm to which the adult may be subjected.

When it is necessary to restrict someone's access, you should have a reasonable basis for making such a decision. When faced with such a situation, it is advisable that you keep a written record of events and the information you considered when making your decision. It is advisable that you forward a letter to the adult whose access to the incapable adult you have chosen to limit, advising them of your decision. Remember, making a decision to restrict someone's ability to visit with the adult should only be done as a last resort.


The PGT may receive calls or letters from individuals alleging a committee is abusing their authority by restricting someone's access to the adult. Our office has an obligation to investigate allegations of inappropriate conduct by a committee. When conducting our



investigation, we will request that a committee provide us with information regarding the need to restrict someone's access to the adult. When our office has had an opportunity to gather and review the relevant information, we may conclude our investigation by taking no further action, offering suggestions to resolve the situation, or when necessary, taking legal steps to resolve the matter.

### **If You Have Questions**

If you have any questions about the making of personal decisions as committee of person, or you encounter a situation not covered above, please contact your Committee Review Officer for more information.



Committeeships are as varied as people's lives. The purpose of this book is to help you perform your duties as committee and to answer many of your questions. There may be situations not covered here. In those cases, your Committee Review Officer is available to support you.

Your chief obligation is to act in the best interest of the adult whose affairs you manage. If you keep that in mind and keep accurate records, you should not have many problems. When difficulties do arise, and this handbook doesn't tell you what you need to know, do not hesitate to contact your Committee Review Officer.

### **Your Comments**

The PGT recognizes and respects your commitment to helping an adult who is unable to manage his/her own affairs. We hope this book will help you through this challenging and rewarding job. We welcome any comments you may have which would make this book more useful to committees.

# Appendix 1 | SAMPLE COURT ORDER

Form 35 (Rules 8-4(1), 13-1(3) and 17-1(2))

No. A123455  
VICTORIA REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

RE: THE PATIENTS PROPERTY ACT R.S.B.C. 1996] CHAPTER 349 AND AMENDMENTS THERETO

AND

MARY SMITH

ORDER MADE AFTER APPLICATION

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

BEFORE MASTER LEWIS

MONDAY, THE 31ST DAY OF OCTOBER, 2011

ON THE APPLICATION of the petitioner, John Doe,

coming on for hearing at Victoria, British Columbia, on Thursday, October 15, 2011 and on hearing Jane Q. Lawyer, Counsel for the Petitioner, and upon the reading of the material filed herein;

without notice coming on for hearing at \_\_\_\_\_, British Columbia on \_\_\_\_\_, \_\_\_\_\_, 20\_\_ and on hearing \_\_\_\_\_;

without a hearing and on reading the materials filed by \_\_\_\_\_ and \_\_\_\_\_;

THIS COURT ORDERS that:

1. the above-named Mary Smith is by reason of mental infirmity arising from disease and age incapable of managing herself or her affairs;
2. the Petitioner, John Doe, be and is hereby appointed as Committee of the person and estate of Mary Smith;
3. the Committee be and is hereby required to post a bond with a corporate surety in the amount of ONE HUNDRED NINETY TWO THOUSAND (\$192,000.00) DOLLARS in the name of the Public Guardian and Trustee, approved by the Registrar of the Supreme Court of British Columbia, and filed with the Public Guardian and Trustee;
4. the bond in the amount of ONE HUNDRED AND NINETY TWO THOUSAND (\$192,000) DOLLARS in the name of the Public Guardian and Trustee may be reduced upon the agreement of the Public Guardian and Trustee or upon further Order of this Court;
5. John Doe shall not sell, transfer, encumber or otherwise dispose of the real property of Mary Smith described in the Schedule to the Affidavit of Kindred and Fortune and described below ("The Property") without further Order on notice to the Public Guardian and Trustee or without the prior written consent of the Public Guardian and Trustee.

Civic Address: 1111 Smith Street, Vancouver, BC

Legal Description: PID: 111-111-111

Lot 1 Block 1 District Lot 11 Plan 1111

6. Upon the sale of The Property, the net sale proceeds, after deduction of taxes, commissions, legal fees and other adjustments shall be transferred from the conveyancing lawyer's trust account to a financial institution where an investment has been established by the committee in compliance with the *Trustee Act*. The committee shall have no access to the capital of the investment, other than for reinvestment purposes, without the prior written consent of the Public Guardian and Trustee. The financial institution and any successor institutions shall be served with a copy of the Order and proof of service of the Order shall be provided to the Public Guardian and Trustee forthwith.

7. the Petitioner shall be paid his reasonable costs and expenses of and incidental to this application out of the estate of the said Mary Smith.

By the Court

\_\_\_\_\_  
District Registrar

APPROVED AS TO FORM

\_\_\_\_\_  
Solicitor for the Petitioner

(The sections of the Court Order are explained on the next page)

## **1. The Details of the Hearing**

The first paragraph of the order gives details of the hearing: who attended, what information (usually in the form of affidavits) was presented and who was given copies of the court documents (or was “served”) in advance of the hearing.

## **2. Declaration of Incapability**

The next thing the order does is declare that the adult who is the subject of the application is incapable of managing his/her person or affairs, or both. The order states if the incapability is due to mental infirmity arising from old age, disease, or other causes.

The phrase “incapable of managing his/her affairs” means that the adult is unable to make decisions about his/her financial and legal matters. Your authority to make financial, business and legal decisions for someone else is called “committee of estate”.

The phrase “incapable of managing himself/herself” means that the adult cannot make decisions about his/her physical person as opposed to decisions about financial or legal affairs. These decisions include consent to medical treatment. Your authority to make personal decisions for someone else is called “committee of person”.

## **3. Appointment of Committee**

After the declaration of incapability, the order goes on to appoint you committee (or one of two or more co committee). If you are appointed as a co committee, the order says whether you must act together, or if you can delegate tasks and functions amongst yourselves as you may agree.

## **4. Bond**

A typical order may also require that a bond be posted for part or all of the estate.

## **5. Restrictions**

The court can make any restrictions on your power that it sees fit. This may include restrictions in dealing with specific investments or real property unless you have prior written consent from the PGT or the court.

## **6. Costs**

The last provision in the order may deal with costs of the application; that is, your legal bill. The reasonable costs of the application to obtain the order may be paid from the account of the adult whose affairs you manage if the court order allows.

## Appendix 2 | “TO DO” LIST FOR NEW COMMITTEES

This “To Do” list gives an overview of the tasks that you, as a new committee should complete.

### Set up your records

- Consider contacting a bookkeeper or accountant for assistance if you feel you need help, or obtain a software program.
- Set up a cash transaction journal or a method of keeping track of your cash expenses.
- Obtain copies of all documents filed with the court.
- Obtain a copy of your court order.
- Establish a filing system using binders, file folders, or envelopes.

### Identify and list all assets and liabilities

- Bank accounts, investments, securities
- Vehicles
- Real property/mortgages
- Personal effects/jewellery
- Business interests
- Credit cards, lines of credit, other loans
- Determine all sources of income.

### Perform initial estate management duties

- Decide whether to maintain or dispose of assets.
- Notify all parties of your appointment, providing a copy of the order as required.
- Pay debts.
- Ensure medical/insurance premiums are paid.
- Set up a budget.
- Develop a written investment plan/strategy (see Chapter 5).

### Identify legal and tax issues

- Locate will.
- Identify any specific bequests.
- Identify any interests in estates or trusts.
- Check that Income Tax filings are up to date.
- Other criminal and/or civil proceedings, if applicable.

### Perform ongoing estate management duties

- Take care of legal, business and family matters (e.g., make investments, prepare tax returns, etc.).
- Ensure adequacy of care given to adult’s financial means.
- Record reasons for any decisions you may make at the time of making them.
- Present accounts to the PGT as directed by our office.

### Consider Committee of Person responsibilities

- Contact adult’s doctor regarding scheduled visits.
- Assess and address any safety concerns regarding the adult’s living situation.
- Contact any social service agencies that may be providing services.
- Review the adult’s care plan if applicable.
- Attend case conferences.
- Record reasons for any of the health care decisions you may make on behalf of the adult at the time of making them.

**Wind up the Committeeship (on transfer of Committeeship at rescission, death or capability)**

- Notify relatives and PGT.
- Provide copy of death certificate to PGT.
- In case of death, notify executor or lawyer, facilitate funeral arrangements with executor/administrator and/or family members.
- Do not prepare or submit accounts to the PGT unless directed .
- Have accounts available for the new legal representative of the estate to review.
- Manage the estate until you can transfer assets to:
  - the adult for whom you were committee, if declared capable by the court;
  - the new committee, upon receipt of the new court order; or
  - the executor or administrator of the estate.

**Notes:**





PUBLIC GUARDIAN  
AND TRUSTEE OF  
BRITISH COLUMBIA

**Private Committee Services**

Public Guardian and Trustee  
#700 – 808 West Hastings Street  
Vancouver, BC V6C 3L3

Tel: 604.660.1500

Fax: 604.660.4456

[www.trustee.bc.ca](http://www.trustee.bc.ca)