



PUBLIC GUARDIAN
AND TRUSTEE OF
BRITISH COLUMBIA

OPTIONS TO CONSIDER

When an Individual has Difficulties Managing Their Financial, Legal or Personal Affairs

| TERM | MECHANISM | PROCESS | WHO BECOMES SUBSTITUTE DECISION MAKER | POWERS GRANTED | MENTAL CAPABILITY OF THE INDIVIDUAL |
|---|---|--|--|--|---|
| Informal Resolution | N/A | N/A | N/A | Examples: - Direct Deposit or Payment - Retirement Planning - Community Supports - Income Tax Clinics | Assume capability. |
| Enduring Power of Attorney | <i>Power of Attorney Act</i> | Capable person signs a document with witnesses. | Any capable adult - family, friends, trust company, and only in exceptional circumstances, the Public Guardian and Trustee. | The attorney may direct on legal or financial decisions. Powers can be either general or specific. Enduring clause allows attorney to act if donor becomes incapable. | Capable (See s.12 of the Act). |
| Representation Agreement | <i>Representation Agreement Act</i> | Adult creates individual agreement. Witnessing is done in required format. | Any capable adult - family, friends, trust company, and in limited circumstances, the Public Guardian and Trustee, for finances only. | Depending on type and scope of agreement, representative may be authorized to make personal and health care decisions, or manage routine financial affairs, when adult is no longer able to. | Section 9 agreement - Capable (See s. 10 of the Act). Section 7 agreement - Assume capability and refer to factors (See s. 8 of the Act). |
| Pension Trusteeship | Federal Income Security Programs (ISP) - standard form | One physician signs form and applicant sends to ISP. | Any capable adult - family, friends, Public Guardian and Trustee. | Trustee can manage monies paid through OAS/GIS/ CPP only. A trustee cannot manage any other income or assets. | Mentally incapable of managing federal funds. |
| Temporary Substitute Decision Maker (TSDM) | <i>Health Care (Consent) & Care Facility (Admission) Act - Part 2</i> | Health Care Provider (HCP) chooses as per hierarchy of qualified near relatives and close friends in the Act. PGT can authorize someone as TSDM or act as TSDM as last resort. | TSDM is chosen by the HCP or failing that, the PGT may authorize someone to make the decision, or as a last resort, make the decision. | Authority to consent to or refuse the health care proposed, subject to some limitations. | Mentally incapable of consenting to a specific health care decision as determined by the HCP. |
| Designated Agency (DA) - Legal Mandate to Investigate | <i>Adult Guardianship Act, Part 3</i> | DAs must look into reports of adult abuse and neglect they receive or become aware of. | N/A | DAs can offer available and appropriate support and assistance. For adults who cannot get assistance on their own, DA can also use legal tools under the <i>Adult Guardianship Act</i> to protect the adult. | Presumed to be capable unless there is reason to believe adult is abused or neglected and not able to get assistance on their own because of a restraint, physical disability, or condition that impacts decision making ability. |

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| PGT Investigation of attorneys, representatives, committees | <i>Public Guardian and Trustee Act, s. 17, 18</i> | Referrals can be made to Assessment and Investigation Services (AIS) at the PGT. | N/A | Authority to collect personal information. Can also apply for Committeeship if appropriate. | Reason to believe an adult is incapable of managing financial affairs. |
| PGT Protective Powers | Assets protection - <i>Public Guardian and Trustee Act (s. 19)</i> | Referrals can be made to AIS at the PGT. | N/A | PGT can restrict access to assets (e.g., bank accounts) for up to 30 days, renewable to a maximum of 120 days, until it is clearer what the adult's situation is, and can conduct an investigation if there is reason to believe the adult is mentally incapable and not able to make their own decisions. | Must have reason to believe - <ul style="list-style-type: none"> Adult is an adult under Part 3 - abused or neglected, unable to seek support and assistance, with a condition affecting decision making Adult's assets are at risk and in need of immediate protection |
| Support and Assistance Court Order (Provincial Court Order) | <i>Adult Guardianship Act, Part 3</i> | Designated Agency asks PGT to arrange for an assessment of incapability according to Practice Guidelines. If adult assessed as incapable, DA can apply to court for order. | Court may order a Support and Assistance Plan; may include 'services of PGT' or restraining order, etc. | Court can order that the adult be provided with any or all of the services outlined in the Support and Assistance Plan, e.g., admission to a care facility, restraining order. Order can be for up to 12 months, renewed for up to 12 months more. | Mentally incapable of refusing support and assistance offered. |
| Committee of Estate | Certificate of Incapability <i>(Adult Guardianship Act Part 2.1)</i> | Upon receipt of an assessment of incapability from a Qualified Health Care Provider, a certificate of incapability is signed by a Health Authority Designate. | Public Guardian and Trustee only. | The Public Guardian and Trustee has full responsibility for the legal and financial affairs of the adult. | Incapable of managing financial and legal affairs. |
| Committee of Estate (Supreme Court Order) | Court Order <i>(Patients Property Act)</i> | Two physicians' opinions and a court hearing. | Any capable adult - family, friends, trust company, Public Guardian and Trustee. | The Committee has full responsibility for the financial and legal affairs of the individual and is accountable to the Public Guardian and Trustee. | Incapable of managing financial and legal affairs. |
| Committee of Person (Supreme Court Order) | Court Order <i>(Patients Property Act)</i> | Two physicians' opinions and a court hearing. | Any capable adult (recommend family or close friend). | The Committee makes decisions regarding personal care, healthcare and family placement. | Incapable of making personal decisions. |
| Mental Health Committal | Certificate under <i>Mental Health Act</i> | One medical certificate for admittance; two certificates for committal to psychiatric facility. | Director of a designated facility makes treatment and placement decisions relating to psychiatric diagnosis. | Involuntary committal for psychiatric treatment - time limited. | N/A |