HOW YOU CAN HELP

Options for Helping Adults Who Cannot Manage Financial and Legal Matters on Their Own

Important note: The Public Guardian and Trustee is providing this information to introduce you to the options available to help adults you care about ensure that their financial affairs and legal matters will be managed in their best interests and according to their values and wishes. This guide refers to legal requirements but it is not legal advice. It is general information and is not a substitute for legal advice. If you need legal advice about the law or pursuing the options discussed in this publication, contact a lawyer or notary or your local community law office.

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A. Introduction

The Public Guardian and Trustee (PGT) operates under provincial law to protect the interests of those who cannot protect themselves, including children under the age of 19, adults who require assistance in decision making, and deceased and missing persons.

Each year, many people call the PGT to learn what they can do to help adults who are not able to manage their financial and legal affairs on their own.

While the PGT can step in to assist, the most knowledgeable, caring and compassionate assistance comes from family and friends.

This guide explains the options available.

We hope it will answer many of your questions and help you plan a safe and secure future for someone in need of assistance.

Options for Managing Financial Affairs

Adults who are having difficulty managing their own financial and legal affairs are vulnerable in our society.

Dealing with routine banking and legal matters may be difficult or even impossible.

They may lose track of bank accounts, forget to pay bills or be easily persuaded to turn property over to strangers.

Sometimes assistance is not needed today but adults may be worried that help will be needed in the future. You can help.

This guide will explain a number of options for dealing with a range of concerns from helping someone plan ahead to putting formal arrangements in place and, if necessary, making a report to authorities if you suspect financial abuse.

The most appropriate option will depend on the adult's individual concerns, needs, and circumstances.

Examples of situations where an adult may require assistance are described below.

Concern	Options to Consider
An adult is capable but is worried about the future and wants to arrange for someone to make decisions	An adult can plan ahead by making a legal document that gives authority to someone else to make decisions. The **personal planning options** in BC are: • An **enduring power of attorney.** • A **representation agreement for routine management of financial affairs.** • A **nomination of committee** identifying the person that the adult wants the court to appoint as the Committee of Estate if it becomes necessary.

Concern	Options to Consider
An adult is capable but needs help with things like signing documents, banking, bill payments and tax returns	Sometimes informal options are all that are needed. Even if the adult has made an enduring power of attorney or representation agreement, it may not be necessary or appropriate for the attorney or representative to start acting. **Informal options** include: • Financial institutions may be able to help arrange direct deposits and automatic bill payments. • Tax clinics can assist with tax returns and ensure all tax refunds and credits are claimed. • Financial planners, trust companies, accounting firms and law firms may be able to provide advice and/or assistance. • Community agencies may be able to identify services to meet the adult's specific needs and circumstances.
An adult is not capable of managing his or her financial affairs and the only income is one or more federal pensions	If an adult is only receiving federal pension income (CPP, OAS, GIS), a trusted person who is responsible with money can apply to become a **Pension Trustee** in order to receive the pension money and pay bills on the adult's behalf.
An adult is not capable of managing his or her financial affairs and there is a need for someone to have legal authority to manage the financial affairs	If an adult is incapable and has not made an **enduring power of attorney** or **representation agreement for routine management of financial affairs**, a family member, relative or close friend can apply to court to become **Committee of Estate**. A trust company may also apply. If an appropriate person is not available, the PGT can take steps to become Committee of Estate.
An adult is not capable and his or her financial affairs are being mismanaged by the adult or others	If an adult does not appear to be capable and: • is mismanaging his or her affairs, • is being financially abused, • is being pressured to give away money or assets against his or her will, or • a person with legal authority to manage the adult's affairs is mismanaging the money or assets, you can make a confidential **report to the PGT**. The PGT will investigate and determine whether or not steps should be taken to assist or protect the adult. If necessary, the PGT also has the power to halt a sale of property or stop withdrawals from a financial institution.

The options identified above are described in the remainder of this guide. Personal stories are offered to illustrate how the option might work. All characters are fictitious and do not portray actual clients.

B. Informal Options

The laws that govern the personal planning and legal options for substitute decision making discussed in this guide are a group of laws often called British Columbia's adult guardianship legislation.

The laws are designed to ensure that the voices of adults will be heard if they are no longer able to speak for themselves and that their financial interests will be safeguarded.

For example, the *Adult Guardianship Act* sets out the guiding principles for the administration and interpretation of that statute and also sets out a presumption of capability that is found in all of the other statutes.

Guiding Principles

2. This Act is to be administered and interpreted in accordance with the following principles:

(a) all adults are entitled to live in the manner they wish and to accept or refuse support, assistance or protection as long as they do not harm others and they are capable of making decisions about those matters;

(b) all adults should receive the most effective, but the least restrictive and intrusive, form of support, assistance or protection when they are unable to care for themselves or their financial affairs; and

(c) the court should not be asked to appoint, and should not appoint, guardians unless alternatives, such as the provision of support and assistance, have been tried or carefully considered.

Presumption of Capability

3. (1) Until the contrary is demonstrated, every adult is presumed to be capable of making decisions about the adult's personal care, health care and financial affairs.

(2) An adult's way of communicating with others is not grounds for deciding that he or she is incapable of making decisions about anything referred to in subsection (1).

Adult Guardianship Act [RSBC 1996 c. 6]

Informal options are the least intrusive means of providing assistance to an adult.

As can be seen below in Jacob's situation, a number of services are available that can help him manage his financial affairs while ensuring that he retains independence and control.

SCENARIO

Jacob

Jacob is 80 years old and recently suffered a mild stroke.

He has always managed his finances and is actively involved in the decisions about his investment portfolio.

He recently moved from his apartment to an assisted living facility.

Jacob's niece Rebecca lives nearby and has offered to help.

Jacob trusts her but wants to manage on his own for as long as possible.

Rebecca helps Jacob put the following arrangements in place:

- *Jacob's financial institution helped him arrange for automatic deposit of his pensions as well as payment of his regular bills.*
- *He asked his investment advisor to switch his account to a discretionary investment service where Jacob agrees on the investment strategy, but investment experts make the day to day decisions. There is an extra cost for this service, but Jacob will not have to worry about making the day to day decisions.*
- *He asked his accountant to assume responsibility for preparing his taxes and he signed an authorization for his accountant to talk to the Canada Revenue Agency.*

Once these arrangements were in place, Jacob wanted to talk about longer term planning in case he had another stroke.

Rebecca obtained information on personal planning options available to Jacob in British Columbia so that he could look at the options and ensure his wishes are known.

C. Personal Planning Options

In BC, adults may plan ahead to ensure financial, legal, personal and health care decisions will be made by someone they trust and in accordance with previously expressed wishes.

The legal planning tools for naming someone to deal with financial and legal affairs are an **enduring power of attorney (EPOA)** and a **representation agreement for routine management of financial affairs (Financial RA7)**. An explanation on why it is called a Financial RA7 is provided on page 12 of this publication.

An alternative is to nominate a Committee of Estate. This part of the guide describes an EPOA and a Financial RA7. See the section on Committee of Estate later in this guide for further information on nomination of a committee.

The legal planning tool for naming someone to make personal and health care decisions is a representation agreement for personal and health care.

Advance directives can also be made to give specific instructions regarding certain health care treatments.

For more information regarding representation agreements and advance directives, see the PGT publication *It's Your Choice: Personal Planning Tools.*

C1.Enduring Power of Attorney (EPOA)

Introduction

If an adult wants to give someone authority to manage his or her financial and legal affairs in case of future incapability, you can help him or her learn about an **enduring power of attorney** (EPOA). This is a special type of power of attorney.

You can help him or her understand what it is, how it works and what to consider before making it.

If an adult already has an EPOA but no longer wants the person named as the attorney to act, or the attorney is no longer available, the adult may need help revoking the EPOA and making a new one.

It may also be necessary to help the adult obtain legal advice to have his or her wishes put into place.

There are a number of rules for making an EPOA.

If the adult wants to appoint you as the attorney in the EPOA, it is important that you understand what is involved and are sure that you can fulfill the duties and responsibilities.

If you are not comfortable with taking on the responsibility, you do not have to.

However, you may be able to help the adult identify someone else who is appropriate.

What is an EPOA?

A "power of attorney" (POA) is a legal document where an adult appoints another person to make financial and legal decisions on his or her behalf.

The *Power of Attorney Act* is the legislation that sets out the rules for making a POA and how it can be used.

In BC, we have two kinds of POA. It is important to understand the difference.

A general power of attorney (POA) is a legal document that allows an adult to appoint a trusted person to look after his or her financial affairs at his or her direction or on his or her behalf when the adult is unavailable.

A POA might be limited to a single bank account or an asset such as the adult's house, or it may cover all financial and legal affairs for a period of time.

A general power of attorney ends if the adult becomes incapable.

An **enduring power of attorney** (EPOA) is a legal document that allows an adult to appoint a trusted person to manage his or her legal and financial affairs if he or she needs help with decision making or is incapable and can no longer make decisions.

The person named to make decisions for the adult in a POA or EPOA is called an attorney.

Who can make an EPOA?

In BC, an adult (19 years or older) can make an EPOA unless he or she is incapable of understanding the nature and consequences of the EPOA.

This means that the adult must understand all of the following:

- the property the adult has and its approximate value;
- the obligations the adult owes to his or her dependants; and
- that the adult's attorney will be able to do on the adult's behalf anything in respect of his or her financial affairs that the adult could do if capable, except make a will, subject to the conditions and restrictions set out in the **enduring power of attorney**;
- that, unless the attorney manages the adult's business and property prudently, their value may decline;
- that the attorney might misuse the attorney's authority; and
- that the adult may, if capable, revoke the EPOA.

Duties and responsibilities of an attorney under an EPOA

When someone agrees to be an attorney, they take on a number of responsibilities. The person should have the time and skill required for the financial responsibilities involved and be willing to take on the role.

Duties of an attorney include:

- acting honestly and in good faith
- exercising the care, skill and diligence of a reasonably prudent person
- only making decisions the attorney is authorized to make
- investing assets according to rules in the *Trustee Act*
- keeping the adult's assets separate from the attorney's assets
- keeping records of the adult's assets and their value, as well as transactions so that an accounting can be created

When managing and making decisions, an attorney must act in the adult's best interests, taking into account the adult's known current wishes, known beliefs and values, and any directions set out in the EPOA itself. In addition, to the extent reasonable, the attorney must:

- give priority to meeting the personal care and health care needs of the adult
- foster the independence of the adult and encourage the adult's involvement in decision making that affects the adult
- keep the adult's personal effects available to the adult

Other rules an attorney needs to know include:

- the attorney cannot make or change a will for the adult
- the attorney cannot sell or give away property that the attorney knows is a specific gift in the adult's will, except in certain circumstances
- there are restrictions on making or changing beneficiary designations
- there are restrictions on making gifts, loans and charitable donations
- the attorney cannot make a gift or loan to himself or herself unless it is permitted in the EPOA
- an attorney can hire agents but cannot delegate decision making to others except to qualified investment specialists
- the attorney cannot be paid for acting as attorney unless the EPOA provides for compensation but the attorney can be reimbursed for reasonable expenses properly incurred while acting as the attorney

Adults do not have to make an EPOA. It is their choice. It is one tool that can be used to plan for the future.

Who can act as an attorney under an EPOA?

A person named as an attorney under an EPOA must be an adult (age 19 or older in BC).

It is also important to ensure that the attorney is not a person who is prohibited from acting.

Prohibited persons include persons who provide personal or health care services to the adult for compensation; employees at a facility where the adult lives if the facility provides those personal or health care services; and employees and volunteers who work at licensed facilities regulated under the *Community Care and Assisted Living Act* or the *Hospital Act*.

There is an exception if the attorney is the adult's spouse, child or parent.

An attorney's authority to act under an EPOA ends if the attorney becomes bankrupt.

The following example illustrates how a well planned EPOA can help ensure that a trusted person will have the authority needed to manage an adult's financial affairs in the future if the adult cannot make his or her own decisions.

SCENARIO

Jeannette

Jeannette lives in a rental apartment. When her husband died she made an enduring power of attorney (EPOA). She appointed her youngest son Phil as the attorney. Soon after, Jeannette had a fall and suffered a number of complications. She was hospitalized for 2 months. During that time she had difficulty making decisions and had limited mobility.

As her attorney under the EPOA, Phil took over responsibility for her financial affairs including bill payments, rent, and investment decisions. In time, Jeannette regained sufficient capability to manage her day to day affairs. Phil stopped doing her banking, but at Jeannette's request, he continued to oversee the investments. He discussed decisions with her and ensured she received copies of the statements. Phil and Jeannette told the bank and investment advisor of the new arrangements.

By making an EPOA Jeannette ensured that Phil had the authority he needed to help her manage her financial affairs when needed. Phil complied with his duties to Jeannette by allowing her as much independence as she wanted, keeping her informed and consulting her where possible.

For more information

There are a number of rules about how an EPOA is made and how it can be used. There are also rules about changing or revoking an EPOA. Please see our publication ***It's Your Choice: Personal Planning Tools*** for a more detailed discussion about EPOAs.

EPOAs Made Before September 1, 2011

The rules for making an EPOA in British Columbia changed significantly on September 1, 2011. EPOAs made before September 1, 2011 remain valid and can still be used. However, the attorney is now subject to new rules and may not be able to carry out all of the adult's wishes. For example, there are limits on the total amount of gifts, loans and donations that can be made in a year unless the EPOA provides otherwise. The adult may want to review existing personal planning documents and seek legal advice to determine whether changes should be made.

C2. Representation Agreement for Routine Management of Financial Affairs (Financial RA7)

Introduction

When an adult is mentally incapable of making an **enduring power of attorney** but needs assistance with decision making or wants to give someone authority to manage his or her financial and legal affairs because he or she is having difficulty, you can help the adult learn about making a **representation agreement for routine management of financial affairs** (Financial RA7).

You can help the adult understand what it is, how it works and what to consider before making it.

It may also be necessary to help the adult obtain legal advice to have his or her wishes put into place. There are a number of rules for making a Financial RA7.

If the adult wants to name you as his or her representative, it is important that you understand what is involved and are sure that you can fulfill the duties and responsibilities.

If you are not comfortable with taking on the responsibility, you do not have to.

However, you may be able to help the adult identify someone else who is appropriate.

What is a Financial RA7?

A representation agreement is a legal document that allows an adult to give someone he or she trusts the legal authority to help or to make decisions on his or her behalf.

A representation agreement can cover personal and health care decisions as well as routine management of financial affairs.

This guide explains a **representation agreement for routine management of financial affairs** only (Financial RA7).

A Financial RA7 is a representation agreement that authorizes a representative to assist the adult to make most day to day financial decisions, or to make the decisions when the adult is not capable of making the decisions alone.

The governing legislation is the *Representation Agreement Act* and section 7 of the legislation specifically authorizes this area of authority. This is why some people refer to this type of representation agreement as a section 7 RA or RA7. Sometimes it is also referred to as an RA with standard powers.

This guide uses the name “Financial RA7”.

A representation agreement is one legal tool that can be used to plan for future decision making.

An adult does not have to make a representation agreement. It is their choice.

A service provider must not require an adult to make a representation agreement as a condition of receiving goods or services.

Who can make a Financial RA7?

In BC, an adult (19 years or older) may make a representation agreement, including a Financial RA7, unless he or she is mentally incapable of doing so.

In deciding whether or not the adult is incapable of making a representation agreement, relevant factors must be considered, including whether:

- the adult communicates a desire to have a representative make, help make, or stop making decisions;
- the adult demonstrates choices and preferences and can express feelings of approval or disapproval of others;
- the adult is aware that making the representation agreement or changing or revoking any of the provisions means that the representative may make, or stop making, decisions or choices that affect the adult;
- the adult has a relationship with the representative that is characterized by trust

An adult may be capable of making a Financial RA7 even if he or she is incapable of making an EPOA or managing his or her financial affairs.

Who can act as a representative under a Financial RA7?

A representative must be 19 or older. Some people cannot be named as a representative.

Prohibited persons include persons who provide personal or health care services to the adult for compensation; employees at a facility where the adult lives if the facility provides personal or health care services; and employees and volunteers who work at licensed facilities regulated under the *Community Care and Assisted Living Act* or the *Hospital Act*.

There is an exception if the representative is the adult's spouse, child or parent.

A representative's authority to manage the adult's financial affairs is cancelled on the bankruptcy of either the adult or the representative.

Duties and responsibilities of a representative under a Financial RA7

A representative has duties and responsibilities that are similar, but more limited in scope, than those of an attorney under an enduring power of attorney. See the definition of "routine management of financial affairs" on page 15.

Therefore, it is important that the representative has the time and skill to assist the adult and/or make decisions on the adult's behalf.

The representative must also be willing to comply with the duties and responsibilities. Duties of a representative include:

- acting honestly and in good faith
- exercising the care, skill and diligence of a reasonably prudent person
- only making decisions that the representative is authorized to make
- investing assets according to rules in the *Trustee Act*
- keeping assets separate from the representative's assets
- keeping records of transactions, decisions made, and related information for inspection by the adult, the monitor or the PGT

When helping the adult to make decisions or when making decisions on his or her behalf, a representative must consult with the adult, to the extent reasonable, to determine his or her current wishes, and comply with those wishes if it is reasonable to do so.

If the adult's wishes cannot be determined, the representative must comply with instructions or wishes expressed while the adult was capable.

If instructions or wishes are not known, the representative must act on the basis of the adult's known beliefs and values, or if these are not known, in the adult's best interests.

Other rules a representative must know include:

- the representative cannot make or change a will
- there are restrictions on making charitable donations
- a representative can hire qualified agents to assist the representative but cannot delegate decision making to others except to qualified investment specialists
- the representative cannot be paid for his or her services unless the amount or rate is set out in the representation agreement and the court authorizes the payment, but the representative and monitor can be reimbursed for reasonable expenses properly incurred

If the representative is not able to follow the adult's previously expressed instructions or does not believe the instructions are the best decision for the adult, it may be necessary to obtain a court order authorizing a decision, or the representative may need to consider obtaining authority to act as Committee of the adult's estate.

Definition of “routine management of financial affairs”

The law sets out a detailed list of what is included in the definition of routine management of financial affairs. This includes:

- paying bills
- receiving and depositing income and pensions
- purchasing food, accommodation and other services for personal care
- opening bank accounts
- making payments on the adult’s outstanding loans
- applying for benefits to which the adult is entitled
- purchasing home and motor vehicle insurance
- establishing an RRSP and making contributions
- converting an RRSP to a RRIF or annuity
- making charitable donations (subject to stricter limits than in an enduring power of attorney)
- preparing and filing income tax returns
- making investments according to the *Trustee Act*
- obtaining legal services and instructing counsel to start proceedings (except divorce) or to continue, settle or defend legal proceedings

A representative appointed under a Financial RA7 is not permitted to:

- use or renew the adult’s credit card or line of credit, or obtain a credit card or line of credit
- obtain a loan, including a mortgage
- buy or sell real property
- guarantee a loan or give an indemnity to a third party
- lend personal property to others
- make gifts or give away property to others
- revoke or change a beneficiary designation
- purchase a new life insurance policy

Naming a monitor in a Financial RA7

When appointing the representative in a Financial RA7, the adult must also name someone to be a monitor. A monitor is responsible for reviewing the representative's actions to ensure that the representative is complying with his or her duties.

A monitor is not required if the representative is the adult's spouse, a trust company or credit union, or the PGT. A monitor is also not required if there are two representatives who must act together.

SCENARIO

Mimi

Mimi is active in her retirement community but she is in the early stages of Alzheimer's disease. Her memory is failing and she is concerned about her future ability to manage money on her own. Because of her diminishing mental capacity she cannot make an enduring power of attorney. Mimi asks her long time friend and neighbour, Mary, to become her representative.

Because Mary is not Mimi's spouse, Mimi needs to appoint a second person to act as a representative with Mary, or name a monitor. Mimi's friend Inez knows Mary and is happy to help. Inez is younger and is good with money.

They agree that Inez will be a monitor. Mary has become a trusted confidante over the years and is honoured to represent her friend and believes she knows the things that matter to her. Still, before signing the representation agreement, she speaks with Mimi at length to be sure she understands Mimi's wishes and expectations.

Mimi has always taken great pride in her appearance and it is important to her that her dignity is maintained as her memory and decision making abilities fail. She has had an abundance of friends throughout her life but as she ages, many have died. She worries that she will be lonely.

As her representative, Mary takes care of Mimi's routine financial affairs. She deposits her cheques, pays her bills and looks after her investments.

Because she has discussed Mimi's wishes and values Mary makes sure that money is allocated each month for a paid companion to visit Mimi once a week and take her on outings. Mindful that Mimi wants to age in style, Mary makes sure that there is money for regular hair appointments and occasionally, for new clothes.

Periodically, Mimi, Inez and Mary meet and Mary shows Inez how Mary's money has been spent.

For more information

There are a number of rules about how a Financial RA7 is made and how it can be used. There are also rules about changing or revoking Financial RA7s.

Please see our publication ***It's Your Choice: Personal Planning Tools*** for a more detailed discussion about representation agreements.

D. Other Legal Options

When an adult who needs assistance with managing his or her financial affairs has not made an EPOA, there is no one able or willing to be a representative under a Financial RA7, and informal options are not practical or possible, there are two ways for someone to obtain legal authority to manage some or all of an adult's financial affairs – federal government **pension trustee** or **Committee of Estate**.

The choice will depend on the circumstances and the adult's needs.

D1. Federal Government Pension Trustee

What is it?

If an adult is having difficulty managing his or her financial affairs, federal income assistance laws allow a person to be appointed as trustee to collect and manage payments from Old Age Security (OAS), Guaranteed Income Supplement (GIS), and/or Canada Pension Plan (CPP). War veteran allowances can also be collected in the same way.

This may be an option if the adult has no other income sources and no assets to be managed.

If the adult wants you to apply to be the trustee, or if the adult is not capable of making the decision and you are willing to accept the responsibility, you or a trustworthy family member or friend may apply.

Note: *The trustee does not have authority to manage other assets or communicate with Canada Revenue Agency about tax returns and cannot be paid from the adult's assets for acting as pension trustee*.

What is required?

Service Canada can assist with the process. A signed certificate from one qualified medical doctor is required, verifying that the adult needs help to manage his or her pension income.

The doctor may charge a small fee for this service, but a lawyer is not required to complete the application. In addition, the person applying to be trustee must sign an agreement that sets out the trustee's role and responsibilities.

The agreement signed by the trustee requires that the trustee administer the pension benefits in the adult's best interests, maintain yearly records and be prepared to provide an accounting report.

While a pension trustee has a limited authority, it is often all that is needed to assist with routine daily financial matters as can be seen in Raj's example below.

SCENARIO

Raj

Self employed for all of his working life, Raj retired without a private pension plan and has few assets. He relies on federal government pensions to pay the rent and provide for life's necessities. His son Ali can see that Raj's memory is failing and is concerned about his dad's ability to manage his income and pay his bills.

Ali wants to support Raj's wish to remain in his apartment and be as independent as possible for as long as he can.

Ali confirms with Raj's doctor that Raj needs assistance and applies to become Pension Trustee. This enables Ali to collect Raj's pensions and pay his bills.

For more information

See Helpful Links, "Service Canada", at the end of this guide for links to the forms for the doctor and trustee to sign.

D2. Committee of Estate

What is it?

If the court declares that an adult is incapable of managing his or her financial affairs and/or personal and health care decisions, the court may appoint a person to become Committee of Estate responsible for the adult's financial affairs and/or Committee of Person responsible for personal and health care decisions.

A committee has broad powers to make decisions for the adult. In other jurisdictions a committee may be called a guardian. Obtaining authority as Committee of Estate is considered the most intrusive option for dealing with an adult's financial affairs. Because of this, it is important to confirm that informal options, and other solutions such as a federal pension trusteeship or making a Financial RA7, are not sufficient to address the adult's needs.

What is required?

A person must apply to the Supreme Court of British Columbia to be appointed Committee of Estate under the *Patients Property Act*.

The person is usually a trusted close family member or friend who is able and willing to accept the responsibilities. If no one is available or appropriate, a trust company or a credit union that offers trust services may apply. The PGT can also take steps to become committee.

In most situations, a lawyer will be hired to prepare the documents necessary for the court application, including a list of assets and liabilities, the names of the closest next of kin, details regarding the proposed management of assets and plan of care, and the sworn statements of two qualified medical doctors verifying that the adult is not able to manage his or her financial and legal affairs. The court application will be served on the adult and the PGT.

The PGT will make recommendations to the court with respect to medical evidence, bonding requirements or other recommended restrictions on the authority to be given to the committee.

The court order

If the judge is satisfied that the adult is unable to handle his or her own financial and legal affairs, and that the applicant is the appropriate person to act on his or her behalf, the judge will grant a court order declaring the adult incapable of managing his or her affairs and appointing the applicant as Committee of Estate.

The court order is the committee's authority to make decisions on behalf of the adult.

The order may include restrictions on the committee's powers.

The Canadian Bar Association (BC Branch) offers a Lawyer Referral Service that can help find a lawyer who is experienced in dealing with this type of application. See Helpful Links, "Canadian Bar Association", at the end of this guide for Lawyer Referral Services and contact information.

Generally the court will state in the court order that the costs of bringing an application can be recovered from the incapable adult's assets.

Duties and responsibilities of a Committee of Estate

The committee must take full responsibility for the adult's financial and legal affairs. However, the committee is also expected to consider and respect the wishes of the adult. This includes fostering independence of the adult and encouraging the adult's involvement in any decision making that affects the adult.

A committee has wide powers and extensive responsibilities including:

- identifying and securing the adult's assets and income
- managing a budget to look after the adult's expenses and liabilities
- ensuring the adult's legal obligations are met
- preparing all income tax returns, and
- preparing accounts for review by the PGT or court

When applicable, unless limited by the court, responsibilities also include:

- buying or selling the adult's property when it is in his or her best interests
- entering into contracts
- operating any existing businesses
- bringing or defending any lawsuits on behalf of the adult

Within one year of being appointed as committee, a detailed accounting of the estate must be submitted to the PGT.

Subsequent reporting intervals are then assigned by the PGT and may vary from one to five years, depending on factors such as the size and complexity of the estate.

Kim's story below provides an example of when a Committee of Estate is needed and how it works.

SCENARIO

Kim

The unthinkable happened to Kim as she was driving home from a university class. A speeding car, going the wrong way on a one way street, crashed into Kim's vehicle. Kim's injuries were massive.

While she eventually recovered from the broken bones, doctors told her parents that Kim had a permanent brain injury and that she would require ongoing support and assistance to manage her financial and legal affairs.

Kim's parents needed legal authority to negotiate a settlement with the insurers on Kim's behalf.

Once the lawsuit was settled, they would also need legal authority to manage the funds, buy her a home, and ensure that her financial needs were met.

In order to obtain the legal authority required to assist their daughter, Kim's parents applied to the court to become joint committees of her estate.

In doing so, they recognized that they will be taking full responsibility for Kim's finances and will be required to keep records and detailed accounts of Kim's financial affairs.

The PGT will monitor their administration to ensure they are complying with their duties.

For more information

The PGT has prepared a ***Private Committee Handbook*** and a number of information sheets for friends and family members appointed by the court that explain more about the role of a committee. It provides a full review of the duties of a committee, reporting requirements, and the committee's entitlement to compensation.

The PGT has also developed a ***Fact Sheet - Assessing Your Legal Bill*** that may be helpful. These materials, and others regarding Private Committees, are available on the PGT website in the Reports and Publications section.

PGT as Committee of Estate

When there is no relative or friend who is willing and appropriate to become committee of the adult's estate, the PGT may take steps to become Committee of Estate. The PGT can be appointed in one of two ways:

- an application may be made to the court for an order that the adult is incapable of managing his or her financial affairs and appointing the PGT as Committee of Estate
- a designated person from a provincial health authority may issue a certificate of incapability stating the adult is incapable of managing his or her financial affairs

For more information see the PGT publication ***When the Public Guardian and Trustee is Committee.***

Challenging incapability assessments and reassessments

Sometimes the adult may wish to challenge an assessment of incapability. Or the adult may become capable in the future and require a reassessment to confirm his or her capability. It is important for the adult to know that these options are available. The Committee of Estate may need to assist the adult to obtain legal assistance to challenge an assessment of incapability or to coordinate a reassessment.

Nomination of a Committee

A **nomination of committee** is a legal document made by an adult that is signed and witnessed like a will.

A nomination allows the adult to choose who the court will appoint if a committee is ever needed.

A person nominated is not obliged to accept the nomination so the adult may wish to discuss it in advance, including where it will be stored and where other important papers can be found.

If a committee is needed in the future, the person will provide the nomination to the lawyer who will include it with the other documents submitted in the court application. A lawyer may store the nomination, often with the adult's will.

The adult may also notify the PGT that a nomination has been made but the PGT does not keep original nominations.

A **nomination of committee** can be prepared in addition to an EPOA or a Financial RA7 as a backup in case the attorney or representative cannot act. It can also be made instead of an EPOA or Financial RA7. It is the adult's choice.

E. When You Have Concerns About Abuse, Neglect or Self Neglect

If you suspect there is an immediate risk to an adult's physical safety call 911 - the police emergency number.

If you are concerned that an adult has been abused or is being neglected, or the adult is self neglecting and is unable to seek support and assistance on his or her own, you may make a confidential report to a "designated agency".

The "designated agencies" in BC are the five regional health authorities, Providence Health Care (some Vancouver hospital locations) and Community Living BC. If a designated agency receives a report, it will investigate and offer support and assistance to the adult, or if necessary, take steps to protect the adult. In certain circumstances this may involve making a report to police. For a list of designated agencies, see the PGT website at www.trustee.bc.ca/pdfs/STA/Designated_Agencies_Contacts_sept_2011.pdf.

If you are concerned about an adult who may be mentally incapable and unable to look after his or her financial affairs, you can make a confidential report to the PGT if there is a specific, urgent or immediate need and there is no other suitable person who has authority or is willing and able to pursue authority to act on the adult's behalf.

Where there are concerns that a committee, representative or power of attorney for an incapable adult is not complying with their duties, a report may be made to the PGT. The PGT may investigate and determine whether or not informal options can resolve the concern or if a Committee of Estate is necessary to manage the adult's financial affairs.

If the adult's assets are at immediate risk, the PGT may be able to use its emergency powers to halt the sale of property or the withdrawal of funds from a financial institution.

For more information

See the **Public Guardian and Trustee** section in the **Helpful Links** section at the end of this guide for more information on how to make a report to the PGT. For more information on Designated Agencies and contact information, see the PGT publication ***Protecting Adults from Abuse, Neglect and Self Neglect***.

Helpful Links

Public Guardian and Trustee

www.trustee.bc.ca

Assessment and Investigation Services
www.trustee.bc.ca/services/adult/assessments_investigations.html
This page describes the investigation services available at the Public Guardian and Trustee. It also includes links to referral forms and designated agencies.

Personal Planning
www.trustee.bc.ca/services/adult/personal_planning_tools.html
This page provides links to a number of information brochures. Titles include: *It's Your Choice - Personal Planning Tools; Protecting Adults From Abuse, Neglect and Self Neglect; When the Public Guardian and Trustee is Committee.* Some are available in multiple languages.

Publications
www.trustee.bc.ca/reports_publications/index.html
This page provides links to the PGT Private Committee Handbook, fact sheets, and other publications.

Government of BC Abuse of Older Adults Website

Help Starts Here: Information on Abuse and Neglect of Older Adults
www.pssg.gov.bc.ca/victimservices/publications/docs/help-starts-here-abuse-neglect-older-adult.pdf
This page provides information about indicators of abuse, resources available, and steps to take when concerned about abuse of an older adult.

www.seniorsbc.ca/elder/
This page provides information on financial abuse prevention, abuse scams, and consumer protection. It also provides links to resources.

www.healthlinkbc.ca/healthfiles/hfile93d.stm
This page provides information on financial abuse of older adults in English, Chinese, French, Punjabi, Spanish and Vietnamese. It also lists resources for more information.

BC Ministry of Justice

Planning Forms
www.ag.gov.bc.ca/incapacity-planning
This page provides links to forms that may be used for representation agreements and enduring powers of attorney. It also has links to the legislation and regulations.

Nidus Personal Planning Resource Centre and Registry

www.nidus.ca
Nidus offers public education and information and a voluntary registry for personal planning documents. It also offers forms and instruction guides for making representation agreements.

Service Canada Links For Federal Pension Trustee

Trustee
www.hrsdc.gc.ca/cgi-bin/search/eforms/index.cgi?app=prfl&frm=isp3506cpp&ln=eng

Physician Certificate
www.hrsdc.gc.ca/cgi-bin/search/eforms/index.cgi?app=profile&form=isp3505cpp&lang=e

For assistance and mailing address for forms
www.servicecanada.gc.ca/cgi-bin/search/eforms/index.cgi?app=content&dsp=returnispcpp&ln=eng

Canadian Bar Association

Dial-a-Law scripts and audio
www.cba.org/BC/Public_Media/dal/default.aspx

Lawyer Referral Service
604.687.3221 or toll free in BC at 1.800.663.1919
www.cba.org/BC/Public_Media/main/lawyer_referral.aspx

Contact the Public Guardian and Trustee

Greater Vancouver Regional Office

700–808 West Hastings Street
Vancouver, BC V6C 3L3

Phone 604.775.1001
Fax 604.660.9498
Email STA@trustee.bc.ca

Interior–North Regional Office

1345 St. Paul Street
Kelowna, BC V1Y 2E2

Phone 250.712.7576
Fax 250.712.7578
Email STA@trustee.bc.ca

Vancouver Island Regional Office

1215 Broad Street
Victoria, BC V8W 2A4

Phone 250.356.8160
Fax 250.356.7442
Email STA@trustee.bc.ca

PGT Hours of operation Monday to Friday 8:30 am to 4:30 pm

Toll free calling

Toll free calling is available through Service BC.
After dialing the appropriate number for your area (see below)
request to the transferred to the Public Guardian and Trustee.

Vancouver 604.660.2421
Victoria 250.387.6121
Other Areas in BC 1.800.663.7867
Email webmail@trustee.bc.ca

www.trustee.bc.ca

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