

Guidelines for Issuing a Certificate of Incapability Under the *Patients Property Act*



PUBLIC GUARDIAN
AND TRUSTEE OF
BRITISH COLUMBIA

TABLE OF CONTENTS

OVERVIEW	3
1 Using These Guidelines	3
1.1 Background	3
1.2 Reason for the Guidelines	3
1.3 Who will use these Guidelines?	3
2 Legislative Context – <i>Patients Property Act</i>	4
2.1 Certificates of Incapability	4
2.2 Court Orders	4
2.3 Committee of Estate: Scope of Authority	4
3 Guiding Principles for Issuing Certificates of Incapability	5
PART 1 – PROCEDURES FOR ISSUING A CERTIFICATE OF INCAPABILITY	6
1 Role of the Public Guardian and Trustee	6
1.1 Services Provided by Services To Adults Assessment and Investigation Services	6
1.2 PGT Involvement in the Certificate of Incapability Process	6
2 Role of the Health Authority	8
3 Validity of the Certificate	11
4 Emergency Situations	11
5 Ending the Authority of the Public Guardian and Trustee	11
6 Reassessments	12
PART 2 - ADDITIONAL INFORMATION FOR ASSESSORS	13
1 Background	13
2 Purpose of an Assessment	13
3 Responding to a Request for an Assessment	13
4 Communicating with the Adult	14
5 The Assessment Interview	15
6 Assessing Incapability	15
7 Gathering Collateral Information	16
8 After the Assessment	17
9 Undertaking an Assessment if the Adult Refuses	17
10 Collection and Disclosure of Information	17
Appendix 1 – Options to Consider in Abuse and Neglect Situations	18
Appendix 2 – Issuing a Certificate of Incapability - Role of the Public Guardian and Trustee	20
Appendix 3 – PGT Services to Adults Contact Information	21
Appendix 4 – PGT Referral Form	22
Appendix 5 – Physician Preliminary Opinion of Incapability	27
Appendix 6 – Director’s Checklist for Issuing a Certificate of Incapability under the <i>Patients Property Act</i>	31
Appendix 7 – Issuing a Certificate of Incapability - Role of the Health Authority	32
Appendix 8 – Functional and Decision Making Assessment Form under the <i>Patients Property Act</i>	33
Appendix 9 – Sample Client Notification Letter	39
Appendix 10 – Sample Family Notification Letter	40
Appendix 11 – Sample Summary of Assessment	41
Appendix 12 – Sample Certificate of Incapability	42
Appendix 13 – Sample Certificate of Capability	43
Appendix 14 – Sample Confirmation of Discharge	44

Overview

1. Using These Guidelines

1.1 Background

There are a number of laws in British Columbia that aim to assist and protect adults who may be mentally incapable and in need of support. Each of these laws provides different methods of assistance and protection and uses a different test of incapability.

These guidelines outline the process for issuing a Certificate of Incapability under the *Patients Property Act*. A Certificate of Incapability is issued for one reason only – to appoint the Public Guardian and Trustee of British Columbia (PGT) as Committee of Estate of an incapable adult. It is not related to a Certificate or certification under the *Mental Health Act* and the *Mental Health Act* appeal mechanisms do not apply.

The practices and procedures outlined in these guidelines were developed in consultation with the Incapability Assessment Regulations and Guidelines Working Group. This group, made up of representatives from Health Authorities, the College of Physicians and Surgeons, other health care professional organizations and the Public Guardian and Trustee, was initially formed to support the implementation of Part 2 of the *Adult Guardianship Act*. Although this legislation has not come into force, many of the practices and procedures that were outlined by the Working Group reflect current best practice in supporting vulnerable adults. These guidelines are an effort to capture these best practices and encourage their use in relation to Certificates of Incapability under the *Patients Property Act* when that method of support is appropriate.

Following the Overview, the guidelines are written in two parts. Part one outlines the procedures used by the PGT and the Health Authorities in responding to a vulnerable adult who may need the PGT to act as Committee of Estate. Part two provides additional best practice information for assessors, primary care physicians and any others involved in gathering assessment information about an adult.

1.2 Reason for the Guidelines

These guidelines have been created to help protect the rights of adults by promoting best practices and consistent procedures throughout BC for issuing Certificates of Incapability. The *Patients Property Act* provides very little guidance about the process of issuing a Certificate of Incapability.

1.3 Who Will Use These Guidelines?

The guidelines are intended to be used by health care providers, Designated Agencies, regional Health Authorities, directors of Provincial mental health facilities or psychiatric units, and the PGT. They may also assist others in the community who play a role when there is reason to believe that an adult is incapable of managing his or her financial and legal affairs and a Certificate of Incapability may be needed.

2. Legislative Context – Patients Property Act

An adult deemed incapable of managing his or her own financial and legal affairs, or his or her own person, becomes a patient in one of two ways:

- a) A Certificate of Incapability appointing the PGT as Committee of Estate is issued; or
- b) A Supreme court order appointing someone (either the PGT or someone else) as Committee of Estate and/or Committee of Person is issued.

A Committee of Estate has authority to make financial and legal decisions for an adult. A Committee of Person can make personal and health care decisions.

2.1 Certificates of Incapability

A Certificate of Incapability under the *Patients Property Act* can only be issued by a Director of a provincial mental health facility or psychiatric unit as defined in the *Mental Health Act*. (Note that every Health Authority has authorized one or more Directors for this purpose). The issuance of a Certificate of Incapability represents a finding that an adult is incapable of managing his or her own legal and financial affairs due to mental infirmity arising from disease, age or otherwise. It removes the adult's right to make decisions regarding his or her own affairs and appoints the PGT as Committee of Estate.

Certificates of Incapability and Court Orders under this Act should only be issued as a last resort.

A Committee should only be appointed as a last resort. The right to manage one's own financial and legal affairs is a significant right and should only be given up when other less intrusive options have been considered or tried. See Appendix 1: Options to Consider in Abuse and Neglect Situations.

2.2 Court Orders

After hearing an application, the Supreme Court can issue an order deeming an adult to be incapable of managing his or her affairs and appointing a Committee. The court can appoint either or both a Committee of Estate (for legal and financial affairs) and a Committee of Person (for health and personal care matters). A Committee of Person can only be appointed by court order.

2.3 Committee of Estate: Scope of Authority

Regardless of who is appointed or how they are appointed, the authority of a Committee of Estate is limited to the following:

- financial management (e.g., pay bills, secure assets, purchase/sell property etc.) and
- legal representation (as the adult's funds permit)

Being a Committee of Estate **does not** provide the authority to make the following decisions:

- care facility admission
- health and personal care
- restricting access to the adult by others

3. Guiding Principles for Issuing Certificates of Incapability

Guiding Principles for Issuing Certificates of Incapability

1. Incapability assessments should only be conducted as a last resort and are unnecessary if there are alternate ways of adequately meeting the adult's needs.
2. Incapability assessments are undertaken only if the assessment will serve the interests of the adult.
3. An adult has the right to be informed of the intention to conduct an incapability assessment and to be informed of the outcome of the assessment.
4. Incapability assessments begin with the presumption that the adult is capable of making decisions.
5. Incapability assessments are conducted fairly and with respect for the adult.
6. A capable adult has a right to make decisions about his or her financial affairs and must not be assessed as incapable solely because others disagree with the adult's decisions.
7. An incapability assessment is a process to be completed in consultation with the adult, those who are supportive of the adult and an inter-professional team as appropriate.
8. Incapability assessments in the Certificate of Incapability context are concerned solely with the adult's ability to make decisions about his or her financial and legal affairs.
9. Incapability assessors respect the adult's rights to privacy, dignity and well being.
10. A determination of incapability does not automatically mean a Certificate of Incapability is issued. A Certificate of Incapability is only issued as a last resort when the adult needs the PGT as Committee of Estate to protect and manage his or her financial and legal affairs.

Part 1 – Procedures for Issuing a Certificate of Incapability

1. The Role of the Public Guardian and Trustee

The PGT acts in a variety of roles to protect the legal rights and the personal and financial interests of adults unable to manage their affairs independently. The PGT gets involved only when other appropriate substitute decision makers are not available or when required by law.

When carrying out the PGT's statutory roles and responsibilities, staff in Services to Adults (STA) are guided by the following principles and presumptions (set out also in the *Adult Guardianship Act*):

- All adults are presumed to be capable until the contrary is demonstrated;
- Every incapable adult is entitled to the most effective but least restrictive and intrusive form of support and assistance;
- No one should have a substitute decision maker appointed until alternatives have been considered.

1.1 Services Provided by Services To Adults Assessment and Investigation Services (AIS)

Staff members called Regional Consultants provide the following range of services:

- consulting on high risk situations involving abuse, neglect or self neglect of vulnerable adults including information about both formal and informal options available to assist adults
- collaborating with Designated Agencies (Health Authorities or Community Living BC) on investigating allegations of financial abuse when there is a risk of harm to the adult's assets or there is reason to believe that the adult is incapable of managing his or her financial affairs and no other suitable person (e.g., a family member or friend) has the authority or is willing and able to act on the adult's behalf
- identifying others who may have legal authority to provide assistance to adults who are incapable, such as trustees, representatives or attorneys
- investigating the actions of trustees, representatives and attorneys for incapable adults when concerns have been raised about the management of the adult's financial affairs
- exercising protective measures available to the PGT, including temporarily freezing bank accounts or preventing property transfers during an investigation
- where necessary, liaising with the staff of the regional Health Authorities to coordinate assessments of incapability and the overall Certificate of Incapability process (this process is set out in more detail immediately below).

The PGT and Health Authorities may share personal information about an adult that is needed to allow each of them to perform their respective duties.

1.2 PGT Involvement in the Certificate of Incapability Process

The following outlines the steps taken by Regional Consultants during the process of determining whether or not a Certificate of Incapability should be issued (see Appendix 2 for a flow chart of this process).

1.2.1 PGT receives a referral - Anyone can contact the PGT if they are concerned about an apparently incapable adult who needs assistance with the management of his or her financial affairs where there is no one else appropriate and/or available to assist. This can include a concern that the adult is being abused, neglected or is self neglecting. Referrals come from any source including a financial institution, care facility, Health Authority program, family member, or friend of the adult.

Referrals may be made by phoning the Regional Consultant for the applicable region of BC (see Appendix 3 for contact numbers) or by forwarding the Public Guardian and Trustee Referral Form (See Appendix 4).

- 1.2.2 PGT decides if an investigation is needed** - When the PGT receives a call or referral of this kind, a Regional Consultant will determine whether an investigation is needed. The major focus of a PGT investigation is to determine if the adult is in need of a substitute decision maker or if an existing substitute decision maker should be replaced. If an investigation is started, the PGT will normally notify both the adult and the referring party in writing, unless risks or concerns are identified that suggest written notification is not advisable.

In an emergency, the PGT can use temporary protective powers to quickly secure an adult's asset or prevent a transaction.

The investigation may include arranging for a preliminary opinion of incapability. This is generally carried out by contacting a medical practitioner; usually the adult's family physician (if there is one). The medical practitioner will be sent the "Physician Preliminary Opinion of Incapability under the *Patients Property Act*" form (see Appendix 5).

If the PGT makes the arrangements for the preliminary opinion, the PGT will coordinate payment for the opinion and will recover the cost from the adult if the PGT becomes Committee.

If the physician is of the opinion that the adult is capable, but the adult is in a high risk situation, the PGT may consult with a Health Authority about support and assistance measures. If the physician is of the opinion the adult is incapable of managing his or her financial or legal affairs, the PGT will continue its investigation and collect further information about the adult's personal and financial situation.

NOTE: A Physician's preliminary opinion of incapability does not necessarily result in a Certificate of Incapability being issued.

- 1.2.3 PGT decides whether to pursue a legal authority** - After investigating the adult's situation, the PGT reviews the options for assisting the adult and decides whether or not to pursue a legal authority that will allow the PGT to manage the adult's affairs. A legal authority includes, but is not limited to, becoming Committee of Estate under a Certificate of Incapability. The PGT will seek to be appointed as Committee only if there is no one else appropriate and available to assist the adult.

If the PGT decides to pursue a legal authority and in particular, a Committee of Estate under a Certificate of Incapability, the Regional Consultant continues the process of identifying the adult's assets, property, bank accounts, legal issues, as well as all the key stakeholders. Doing this will ensure that the Case Manager in STA Client Services who receives the adult's file can act swiftly and efficiently when and if the PGT is appointed as the adult's Committee of Estate.

Where the PGT is of the opinion that a Committeeship is required, the following factors are considered in deciding whether to be appointed under a Certificate of Incapability or by court order:

- (i) the urgency of the situation;
- (ii) whether protective measures are in place;
- (iii) whether the costs of a court application would cause economic hardship to the adult;
- (iv) whether the adult has assets in a jurisdiction outside B.C. that will require a court order in order to be able to manage them;
- (v) whether a court process is already underway;
- (vi) whether other court orders are needed in addition to a possible Committeeship order.

1.2.4 If PGT requests a Certificate of Incapability – Where the PGT decides to recommend a Certificate of Incapability under the *Patients Property Act*, the Regional Consultant contacts the appropriate Health Authority, forwards all relevant information including a copy of the Director’s Checklist for Issuing a Certificate of Incapability under the *Patients Property Act* (see Appendix 6). If the Health Authority agrees that a Certificate of Incapability should be issued, it will immediately advise the PGT (see Role of Health Authorities below).

1.2.5 Notification Procedures once the PGT is appointed Committee of Estate – On obtaining the Certificate of Incapability, the PGT will normally provide the adult with a letter identifying the Case Manager and describing the role the PGT will be playing as Committee of Estate. However, if the PGT is aware of any risks or concerns related to the adult receiving this information by letter, the client may be advised verbally. If the Health Authority is aware of any such risks, it should convey these to the PGT, and where appropriate, an alternative manner for the adult to be given notice should be recommended. Health Authorities should also advise the PGT of any financial or legal priority concerns that have come to their attention during the course of their involvement. The PGT also notifies involved family, caregivers and relevant third parties such as financial institutions.

2. The Role of the Health Authority

Health Authorities have a wide range of responsibilities and possible responses when dealing with adults who may be incapable and at risk. For purposes of these guidelines, however, the major focus is on the interaction between the Health Authority and the PGT in situations where a Certificate of Incapability is under consideration.

The key procedural steps for Health Authorities are as follows (see also the flow chart in Appendix 7):

2.1 Health Authority receives a referral – A Health Authority can receive a referral in several ways:

- a) A member of the public may identify a concern regarding a vulnerable adult and contact a service provider or Health Authority. In this situation, the Health Authority must determine whether the concern is properly within its mandate and whether there are alternative remedies available, such as supportive people able and willing to address the adult’s needs through a different process (see Appendix 1).
- b) A health care provider may identify a concern around the management of finances in the course of providing other services to that adult. In these situations, the health care provider consults with any other service providers or teams that may already be involved with the adult to ensure coordination and avoid duplication of effort. If more than one Health Authority is involved, staff must agree which Health Authority will take the lead. The lead Health Authority should also consult the PGT.
- c) The PGT may recommend that a Health Authority issue a Certificate of Incapability. Generally the adult will already be known to services within the Health Authority. If the adult is known, the recommendation can be made directly to the authorized Director for that practice area. If the adult is not known, the recommendation can be routed through the intake process for a particular service area. The Health Authority must then follow the steps below to satisfy itself that that a Certificate of Incapability is the best option for the adult.

2.2 Health Authority gathers information – If the referral was made by the PGT and accompanied by a recommendation for a Certificate including a Physician’s Preliminary Opinion of Incapability, Health Authority staff will review the Opinion and all other available information and decide if further assessment information is needed and if so, how it will be gathered.

Where more information is needed, the Physician's Preliminary Opinion of Incapability is generally used as the basis for determining whether the adult is mentally incapable of managing his or her financial affairs. To determine whether the adult is incapable of managing his or her financial affairs, the assessor or assessment team may choose to use the Functional and Decision Making Assessment Form (see Appendix 8).

If the referral is not from the PGT and the Health Authority has identified a concern within its mandate, the Health Authority may initiate an assessment. An assessment can be carried out by a single assessor or an assessment team. Members of a team may include a psychiatrist, general practitioner, psychologist, nurse, social worker, occupational therapist and continuing care case manager.

- Role of an Assessor or Assessment Team:**
- Notifies the adult of the assessment
 - Conducts the assessment
 - Consults the PGT
 - Consults with the Director who makes the final decision about whether to issue a Certificate of Incapability

In situations where an assessment is needed, the assessor or team informs the adult of the intention to do an incapability assessment. To the extent reasonable, the assessor or team involves the adult in the overall process and informs the adult of the outcome, though notification can be waived if the information would be seriously injurious to the adult's health and well being.

The purpose of the assessment in relation to the *Patients Property Act* is to decide whether the adult:

- a) has a mental disorder/disability because of disease, age or otherwise; **and**
- b) as a consequence is incapable of managing his or her financial affairs; **and**
- c) there is a need for the PGT to act as Committee of Estate.

(See Part 2 of these Guidelines for a description of best practices in carrying out an assessment related to financial decision making under the *Patients Property Act*.)

Health Authority staff involved in gathering and reviewing information about an adult or conducting an assessment need to check with their site administrator for any further internal practice guidelines or protocols.

It is important to note that the collection and disclosure of information during the incapability assessment process is governed by the provisions of the *Freedom of Information and Protection of Privacy Act*, the *Patients Property Act*, the *Adult Guardianship Act*, and the *Public Guardian and Trustee Act*. Health Authority staff must be careful to only collect and disclose information about the adult and his or her situation that is **relevant** and necessary to carry out their responsibilities. Professional ethics, including confidentiality, also dictate conduct in these situations.

2.3 Health Authority considers available options for supporting the adult – As the appointment of the PGT as Committee is always a last resort, the Health Authority will explore whether the adult's needs can be met through the provision of community and family supports.

Where a Health Authority finds an adult to be incapable and determines that the appointment of the PGT as Committee is the best available option for the adult, the Health Authority will notify the PGT (if it has not already done so) before proceeding to issue a Certificate.

The Health Authority and PGT make a determination together of whether the adult needs the PGT to act as Committee of Estate and whether the appointment should be made by issuing a Certificate of Incapability.

2.4 The Director decides whether to issue a Certificate - The Director's role is critical to the process as only a director of a Provincial mental health facility or psychiatric unit designated under the *Mental Health Act* has the authority to issue a Certificate of Incapability. Health Authorities are responsible for identifying the authorized directors within their own jurisdiction.

The Director reviews all relevant information in consultation with Health Authority staff. The Director makes a decision about whether a Certificate of Incapability is warranted. As a guideline, the Director completes the Checklist for Issuing a Certificate of Incapability provided by the PGT (see Appendix 6).

The Director ensures that appropriate notice is given to the adult saying that he or she has been assessed and that the Director intends to issue a Certificate of Incapability appointing the PGT as Committee of Estate subject to any further information the adult or family may wish to provide as to why the Certificate should not be issued.

Family members may also be notified if appropriate. The Director determines which family members are the most involved and who should receive notification. The sample notification letters (see Appendices 9 and 10) indicate a waiting period which can be set at the Director's discretion, depending on the urgency of the situation. In the absence of any urgent reason requiring immediate issuance of the Certificate, the Director should wait 10 days (or other time period appropriate and noted in the notification letter) in order to allow the adult or family to identify any reasons why the Certificate should not be issued.

- Role of the Director:**
- Uses the checklist to review all relevant information
 - Ensures that consultation with the PGT has occurred
 - In consultation with staff, decides whether to issue a Certificate of Incapability
 - Ensures notification
 - Ensures validity of Certificate

A Summary of the Assessment (see Appendix 11) is attached to the letter. The Director has the authority to elect not to send a notification letter or the Certificate, but exercises this authority only in circumstances where to send a notification letter would be injurious to the health or well being of the adult. After the waiting period, the Director issues the Certificate of Incapability.

2.5 Distribution of the Certificate and other Documents – Immediately after the Director issues a Certificate of Incapability, Health Authority staff fax copies of the following documents to the PGT:

- Original Certificate of Incapability;
- Director's checklist; and
- Summary of Assessment

See Appendix 3 for the applicable fax number.

Health Authority staff request confirmation by telephone that the fax has been received. The original copies of these documents are then mailed to the Regional Consultant.

A copy of the Certificate of Incapability should also be provided to the adult (and family if appropriate). This can be waived, however, if the Health Authority has determined that providing a copy of the Certificate of Incapability would be detrimental to the well being of the adult. The PGT should be informed if a decision is made not to copy the adult and/or family. The PGT should also be informed if the Director is of the opinion that the PGT should not send a letter to the adult giving notice that the PGT is now acting as the Committee of Estate. The Director can recommend an alternative means of notification.

The Health Authority also makes and keeps copies of the Certificate of Incapability and all other documents in accordance with its own internal records management process.

3. Validity of the Certificate

To ensure a Certificate can be acted upon without having its validity called into question, it should contain the following information:

- the date of issuance;
- the adult's full legal name and any other name the adult is known by;
- the adult's date of birth;
- the signature of the Director of the applicable provincial mental health facility or psychiatric unit designated under the *Mental Health Act* and the name of the Director printed or typed below the signature;
- other information as set out in the sample form.

If there are concerns about the validity of the Certificate, the PGT will consult with the person coordinating the Certificate process at the Health Authority to resolve the situation.

The PGT can request that a Certificate be reissued with additional information or corrections (see Appendix 12 for a sample Certificate).

4. Emergency Situations

An emergency situation can arise at any time in the assessment and Certificate of Incapability process.

Anyone concerned that an adult's assets are at risk and who has reason to believe the adult is incapable of managing his or her legal and financial affairs, can contact a Regional Consultant directly by phone. Subject to the criteria set out in section 19 of the *Public Guardian and Trustee Act*, the PGT may use emergency protective powers to temporarily safeguard the adult's assets until a permanent solution is put in place.

The PGT and the Designated Agencies under the *Adult Guardianship Act* work together in these situations to expedite the process and, at the same time, ensure that a reasonable investigation and assessment process is undertaken. For example, the adult and the adult's family may receive notification by phone rather than by mail of the intention to conduct an assessment and to issue a Certificate.

5. Ending the Authority of the Public Guardian and Trustee

The authority of the PGT ends in the following situations:

- a) the adult is declared capable by Certificate or court order (see Appendix 13);
- b) the adult is "discharged" as per s.11(1)(a) of the *Patients Property Act* at the PGT's discretion (for a sample, see Appendix 14);
- c) a Private Committee is appointed by Supreme court order; or
- d) there has been a previous appointment of an Attorney under an Enduring Power of Attorney or a deemed Enduring Power of Attorney (a pre-September 2011 EPOA, a s.9 Representation Agreement for financial affairs or an out of province agreement that meets requirements), or a Limited Representative under the *Representation Agreement Act* and the PGT exercises its discretion to end its authority as Committee as per s.19(1) of the *Patients Property Act*.

6. Reassessments

Although the *Patients Property Act* is silent on the issue of reassessments where a Certificate has been issued, the rights of an adult to fairness and due process require that reassessments can occur on a reasonable basis.

In the case of an adult disputing an initial assessment, the PGT will consult the Health Authority about whether further assessment information is needed. The PGT will also provide the adult with information. The adult may choose to engage a lawyer and obtain their own medical opinion to dispute the assessment.

If a reassessment is requested by someone other than the adult, the request should indicate evidence of a procedural error or other oversight that is serious enough to call the validity of the Certificate into question.

In situations where the initial assessment is not in dispute and the PGT has assumed authority and is acting on behalf of the adult, the PGT, as Committee, will assist the adult by facilitating a reassessment upon request by the adult if the adult's circumstances have changed or if more than six months have elapsed since the initial assessment or the last reassessment.

A reassessment is normally carried out by a health care provider contracted by the PGT on behalf of the adult, or by a Health Authority. The cost of the reassessment is normally borne by the adult.

When the PGT recommends a reassessment, the PGT will provide the assessor with background material including material that formed part of the previous assessment of incapability. Note that this material may be subject to privacy regulations that limit the scope of information that can be provided.

For the assessor, a reassessment considers the same factors as the initial assessment with one addition – the changes, if any, in the adult's incapability since the previous assessment and the adult's understanding of those changes.

Part 2 - Additional Information for Assessors

1. Background

In BC, incapability assessments are carried out under a number of statutes and for a variety of reasons. While there are many best practices that apply to incapability assessments generally, the focus here is on assessments related to the issuance of a Certificate of Incapability under the *Patients Property Act*.

The Family Practice Division of Community Geriatrics, UBC Department of Family Medicine, generously provided much of the information presented in this Part. Readers of the pre reading materials prepared for the Care for Elders: BC Incapacity Assessment Module, taught by faculty in the Family Practice Division, will recognize a large amount of the information that follows. We acknowledge their contribution to this section.

It should be noted that there is no standard procedure for carrying out an assessment or gathering assessment information. The procedures used will be greatly dependent on the extent to which the assessor has an existing relationship with and knowledge of the adult (Note: the term assessor is used generically in this part to describe any health care provider involved in gathering assessment information).

2. Purpose of an Assessment

The purpose of carrying out an assessment is to determine whether or not the adult meets the criteria for being a “patient” under the *Patients Property Act*. The key elements of that determination are that the person:

- a) is mentally infirm because of disease, age or otherwise; **and**
- b) as a consequence, is incapable of managing his or her financial affairs.

A third element that is considered by the Director when determining whether to issue a Certificate is:

- c) there is a need for the Public Guardian and Trustee to act as Committee of Estate.

3. Responding to a Request for an Assessment

The guiding principles for issuing a Certificate of Incapability (see page 4) identify assessment of incapability as a last resort. Before undertaking a formal assessment, therefore, an assessor should inquire into what other options have been examined by the requesting agency or authority.

An assessment will generally proceed in three parts:

- At least one personal interview with the adult during which the assessor asks the adult questions specific to financial decision making capability,
- The collection of collateral information about the adult, and
- An analysis of whether and to what extent the adult is incapable of making decisions about his or her financial affairs.

4. Communicating with the Adult

To prepare for the assessment interview, the assessor will need some information about how best to communicate with the adult. An assessor must consider the language and mode of communication used by the adult and determine:

- Whether an interpreter is required
- The adult uses sign language
- The level of communication is appropriate given the adult's intellectual development
- The adult uses alternate or augmentative communication
- Supportive family, friends or caregivers are available to help communicate with the adult

The assessor should communicate with the adult in a manner appropriate to the adult's skills and abilities. Assessors keep in mind that the adult may be reluctant to ask questions or ask for clarification. It must also be noted that the backgrounds of the adult and the assessor may affect communication. Being aware of these issues and taking steps to enhance communication practices will decrease the possibility of miscommunication.

In general, an adult demonstrates understanding when he or she:

Note: An assessor may refuse to allow any person to be present during the assessment if, in the assessor's opinion, the presence of the person will not benefit the adult, or will disrupt, or otherwise adversely affect, the assessment.

- Expresses, in his or her own manner of communication, reasonably accurate information about his or her financial situation
- Can paraphrase or communicate in his or her own manner, the options and decisions affecting the adult's financial affairs that are being presented to him or her
- Identifies, in his or her own manner of communication, the risks and benefits of the options and decisions that need to be made
- Indicates how the information applies to him or her

The following are indicators that may be helpful when determining whether the adult understands the basic information needed to make the decision(s) about the adult's financial affairs that need to be made:

- The adult repeats or explains the information in his or her own words or manner of communication
- The adult gives consistent and unambiguous answers to questions
- The adult is able to follow/participate in the discussion about his or her financial affairs
- The adult asks pertinent questions which reflect an understanding of the situation and/or the adult's financial affairs
- The adult's decisions/choices are consistent
- The adult identifies the actions that are necessary to ensure the reasonably effective management of his or her financial affairs

If the adult has a person who is providing support and assistance, the assessor will normally meet or talk to that person prior to the assessment to identify and discuss the ways in which the adult expresses understanding. During this meeting, the assessor may explore the support person's insights regarding:

- The adult's expected reaction to the assessment process and how this might affect communication
- The best way to ask or pose questions to the adult (e.g., the use of repetition, or breaking the question into parts)
- The adult's characteristic responses and what they mean (e.g., eye blink responses)
- The role of the support person during the assessment

Note that the assessor is responsible for asking the questions during the assessment. The support person's role is limited to helping the assessor communicate with the adult, not to answer for the adult.

When the assessor is not familiar with the adult's manner of communication, the support person conveys the information to the adult (e.g., clarifying questions as necessary) and interprets the adult's response with the assessor.

5. The Assessment Interview

The structure of the interview and style of questioning will affect both what information is obtained and how the person being assessed functions during the interview. Choices about structure include the style of questioning that will be employed – from very open ended narrative approaches to very structured, standardized approaches. There are strengths and limitations associated with each.

A goal in using narrative approaches is to facilitate the 'narrative' telling, rather than a question/answer type structure. Some strategies for doing this include: ask 'how' questions; use probes (tell me more about that); and at least initially, avoid questions that require a yes/no response.

Ideally, an assessment interview will incorporate both more open ended, narrative interviewing and the strategic use of more formal, standardized measures. When using this mixed approach, begin with the more open ended questions then move to more specific questions.

6. Assessing Incapability

In addition to exploring the adult's general understanding or his or her financial situation, the following are some specific types of indicators that can be examined:

- The adult's knowledge/understanding of his or her income and its sources, including any pension or other retirement income
- The adult's knowledge/understanding of his or her bills that require payment on a regular basis
- The adult's knowledge/understanding of his or her debts
- The adult's knowledge/understanding of his or her financial assets including his or her investments and property
- The adult's knowledge/understanding of his or her legal needs
- Whether the adult has a power of attorney or a representation agreement, or another person assisting with the management of his or her financial affairs
- Whether the adult has a will, and what it means to have a will
- Whether the adult has a bank account and, if so, whether it is a joint account
- Whether the adult has a credit card and, if so, what it means to have a credit card
- Whether the adult knows how to get to the bank
- Whether the adult knows how to write cheques, use a bank debit card, and/or use an ATM
- Whether the adult ever runs out of money for food, or for the rent, or for the payment of other bills
- Whether the adult's family/friends try to borrow money from the adult
- Where the adult keeps his or her cash
- Whether the adult gives money to charities

(See also the list of suggested questions in Section 5 of Appendix 8: Functional and Decision Making Assessment Form)

An adult's incapability is assessed in context; that is, within the context of how the person is living and usually lives.

Assessors are interested in determining whether the adult's ability to make decisions or problem solve has become significantly worse when compared with his or her abilities in the past, if known.

Assessors are also interested in any discrepancies between the adult's answers to questions about their financial affairs and any collateral information and/or direct observations. If possible, the adult being assessed should be asked about these discrepancies to insure that he or she has the opportunity to offer an explanation.

Since each adult is unique, standardized and psychometrically valid instruments may not be available or useful. Instead, assessors engage in a dialogue with the adult to determine whether or not the adult understands the basic information needed to make a decision and is capable of reasoned decision making.

A note about the use of Cognitive and Functional Tests

In addition to the cognitive components set out above, an assessor may also consider the adult's functional abilities. This means that the assessor bases his or her opinion not only on whether the adult demonstrates an understanding of the factors identified in the test but also whether the adult demonstrates that he or she is able to take steps to ensure that his or her decisions about his or her financial affairs can be implemented. The assessor keeps a record of the details of the assessment and can, if appropriate, use the Functional and Decision Making Assessment Form (see Appendix 8). It should be noted, however, that there are few well developed standardized tools for assessing incapability, and none based on BC's legal standards.

For a review of the literature on the strengths and weaknesses of the most commonly used instruments as a component of assessing incapability see: "*Incapacity Assessments: A Review of Assessment and Screening Tools*," Dr. Deborah O'Connor, Ph.D., RSW, April 20, 2009 (Dr. O'Connor is the Director, Centre for Research on Personhood in Dementia, UBC School of Social Work). A copy can be found on the PGT website at: www.trustee.bc.ca.

7. Gathering Collateral Information

Collateral information is needed to verify or dispute some of the information given by the adult. The information gathered must be relevant and necessary for the assessment.

The assessor will need to decide who to ask for information. The range of potential sources includes family, friends, health care workers, bank tellers and other people who have had financial dealings with the adult, or who are in close contact.

The nature of the questions asked will be dependent on the nature of the problems that have been identified both on the referral and during the process of interviewing the adult. Generally, these would relate to the following issues:

1. How the adult has been functioning with respect to their finances (with specific examples to support the opinion provided),
2. Information regarding the values of the adult,
3. Concerns regarding risks, and
4. Opportunities to enhance capability that the collateral provider may know about.

8. After the Assessment

The assessor is responsible for informing the adult of the results of the assessment. This can be done either verbally or in writing depending upon the adult's condition and circumstances. The way in which the adult is informed is at the discretion of the assessor.

If the assessor has particular views about the manner in which information should be given to the adult, the assessor should communicate those views to the Director and the PGT.

9. Undertaking an Assessment if the Adult Refuses

If the adult refuses to participate in an assessment, an assessor may choose to conduct the assessment as long as the assessor reasonably believes the assessment would be accurately completed by using observational information and information gathered from other sources (i.e., collateral information).

The risks and limitations of proceeding with an assessment without the participation of the adult are significant and the assessor should guard against interpreting the adult's refusal as an indicator of capability. Rather, it is important for the assessor to document any objections raised by the adult as well as the context in which the objections were raised.

Observational information is gathered about the adult as observed by the assessor from the moment of the first contact.

Care should be taken to ensure that sufficient information is collected upon which to base an opinion. It is important to document the source of the collateral information, along with what is said.

10. Collection and Disclosure of Information

The collection and disclosure of information during the incapability assessment process is permitted and regulated by provisions of the *Freedom of Information and Protection of Privacy Act*, the *Adult Guardianship Act* and the *Public Guardian and Trustee Act*.

Assessors must be careful to only collect and disclose information about the adult and his or her situation that is relevant and necessary for the assessment. Professional ethics, including confidentiality, also dictate conduct in these situations.

Appendix 1 – Options to Consider in Abuse and Neglect Situations

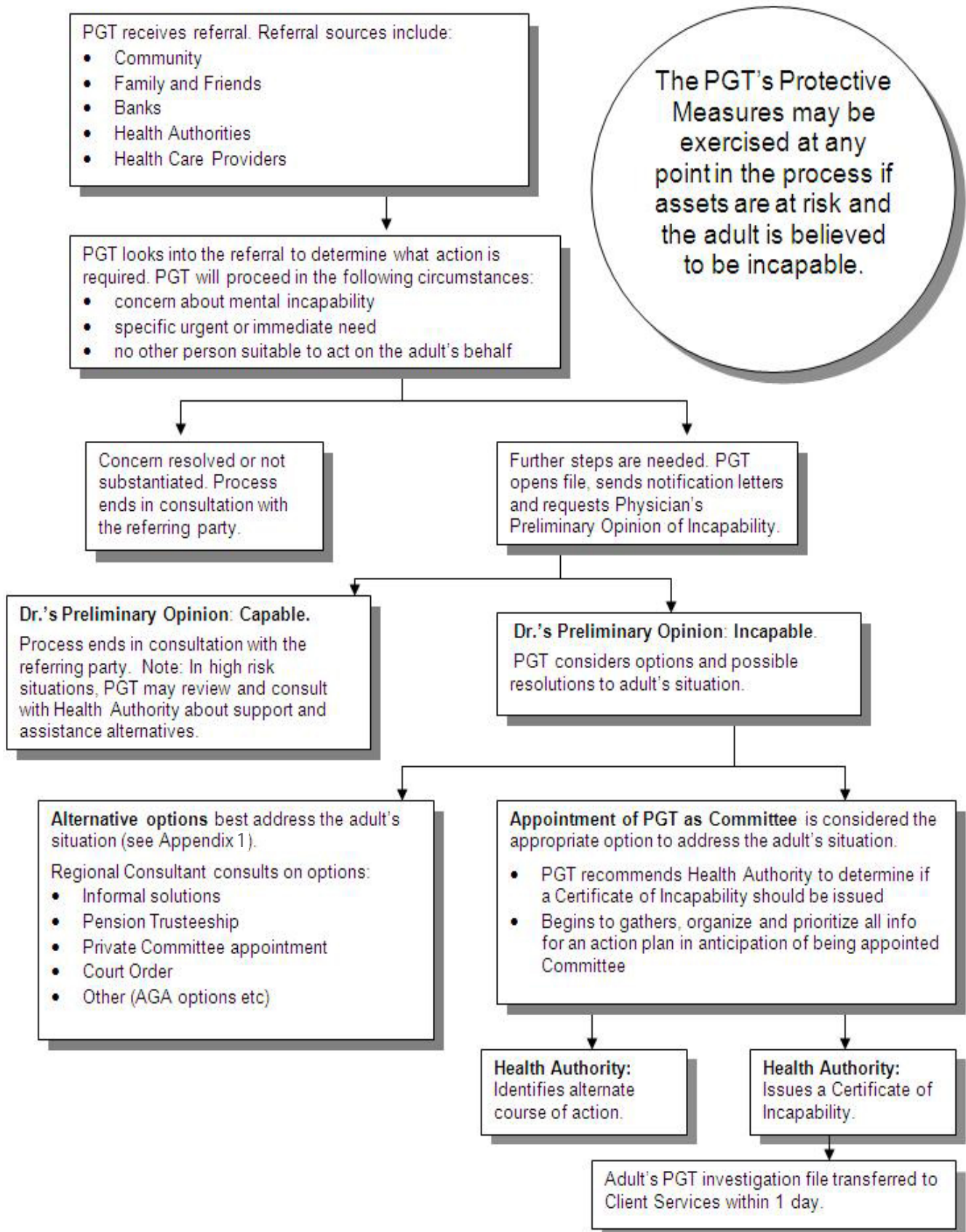
OPTIONS TO CONSIDER IN ABUSE AND NEGLECT SITUATIONS

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
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 - same capability as for an EPOA Assume capability for Section 7 agreement with factors in s. 8(2)
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/CLP 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 or as a last resort, make the decision	Authority to consent to or refuse the health care proposed, subject to some limitations	Mentally incapable as determined by the HCP of making a specific treatment decision
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

TERM	MECHANISM	PROCESS	WHO BECOMES SUBSTITUTE DECISION MAKER	POWERS GRANTED	MENTAL CAPABILITY OF THE INDIVIDUAL
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 (for EPOA)
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 freeze assets (e.g., bank accounts) for up to 7 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
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>Patients Property Act</i>)	Certificate is signed by a Director of a designated Mental Health Facility	Public Guardian and Trustee only	The Public Guardian and Trustee has full responsibility for the legal and financial affairs of the individual	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

Appendix 2: Issuing a Certificate of Incapability - Role of the Public Guardian and Trustee



Contact the Public Guardian and Trustee

Greater Vancouver Regional Office

700-808 West Hastings Street,
Vancouver, BC V6C 3L3
Tel: 604.775.1007
Fax: 604.660.9498
email: ClericalRequest6@trustee.bc.ca

Lower Mainland Regional Office

700-808 West Hastings Street,
Vancouver, BC V6C 3L3
Tel: 604.775.1001
Fax: 604.660.9479
email: ClericalRequest6@trustee.bc.ca

Interior-North Regional Office

1345 St. Paul Street,
Kelowna, BC V1Y 2E2
Tel: 250.712.7576
Fax: 250.712.7578
email: kpiffa@trustee.bc.ca

Vancouver Island Regional Office

1215 Broad Street
Victoria, BC V8W 2A4
Tel: 250.356.8160
Fax: 250.356.7442
email: Victoria-Clerical@trustee.bc.ca

Website: www.trustee.bc.ca

email: 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).

Vancouver: 604.660.2421

Victoria: 250.387.6121

Other areas of BC: 1.800.663.7867

Health Care Decisions

Hours of service for Health Care Decisions are:

8:00 am - 5:00 pm (Mon-Fri)

8:00 am - 12:00 noon (Weekends and Holidays)

On weekends or after regular business hours,
you may call toll free: 1.877.511.4111.

Use regional office phone numbers shown
above during regular office hours Mon-Fri.

Appendix 4 – PGT Referral Form



REFERRAL FORM

Services to Adults

Referral Criteria:

It is appropriate to refer an adult (over the age of 19 years) to the Public Guardian and Trustee of British Columbia if there is:

- a) a concern about the adult’s mental capability to manage financial and legal affairs,
- b) if there is a specific, urgent or immediate need, and
- c) if no other suitable person (family or friend) has the authority or is willing and able to act on the adult’s behalf.

SECTION ONE: PERSONAL INFORMATION

Name of adult:		
<input type="text"/>	<input type="text"/>	<input type="text"/>
Surname	First Name	Middle Name
<input type="text"/>	<input type="text"/>	<input type="text"/>
Maiden Name	Alias (if applicable)	Gender
Current location: Apartment /suite number <input type="text"/> Street <input type="text"/>		
City <input type="text"/>	Postal Code <input type="text"/>	Phone <input type="text"/>
Primary residence (If different from above):		
Apartment /suite number <input type="text"/> Street <input type="text"/>		
City <input type="text"/>	Postal Code <input type="text"/>	Phone <input type="text"/>
Marital status: <input type="text"/>	Personal Health Number: <input type="text"/>	
Social Insurance Number: <input type="text"/>	Old Age Security Number: <input type="text"/>	
Date of birth: (MM/DD/YY) <input type="text"/>	Place of birth: <input type="text"/>	
Citizenship: <input type="text"/>	Residency: <input type="text"/>	
Aboriginal status: <input type="text"/>	AANDC Status #: <input type="text"/>	
Religion (if applicable): <input style="width: 100%; height: 40px;" type="text"/>	Language/communication method if other than English: <input style="width: 100%; height: 40px;" type="text"/>	
Date of hospital or facility admission: MM/DD/YY <input type="text"/>	Phone: <input type="text"/>	
Name of hospital or facility: <input style="width: 100%; height: 20px;" type="text"/>	Fax: <input type="text"/>	
	Email: <input type="text"/>	
	City: <input type="text"/>	

SECTION TWO: REASONS FOR REFERRAL

Describe the problem(s) that the adult needs assistance in resolving. Describe how the involvement of the PGT will assist in the resolution of the problem(s)

Why do you think this adult is unable to make decisions or resolve the problem(s) described previously?

How are the adult's financial and legal affairs presently being managed?

- | | | |
|--|---|------------------------------------|
| <input type="checkbox"/> Self | <input type="checkbox"/> Government Pension Trusteeship | <input type="checkbox"/> Family |
| <input type="checkbox"/> Power of Attorney | <input type="checkbox"/> Committeeship | <input type="checkbox"/> Other |
| | <input type="checkbox"/> Representation Agreement | <input type="checkbox"/> Uncertain |

Do any of the adult's assets require urgent protection? Yes No

If yes, please provide details:

Physician's Name: <input style="width: 90%;" type="text"/>	
Address: <input style="width: 90%;" type="text"/>	
Telephone: <input style="width: 30%;" type="text"/>	Fax: <input style="width: 30%;" type="text"/>
Health Authority: <input style="width: 25%;" type="text"/>	Health Authority Name: <input style="width: 25%;" type="text"/>
Health Unit Name: <input style="width: 25%;" type="text"/>	Address: <input style="width: 50%;" type="text"/>
Contact name: <input style="width: 30%;" type="text"/>	Phone: <input style="width: 20%;" type="text"/> Email: <input style="width: 20%;" type="text"/>
Is the adult aware of this referral: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure	
If yes, what is the adult's response? <div style="border: 1px solid black; height: 100px; width: 90%; margin: 10px auto;"></div>	

SECTION THREE: FINANCIAL INFORMATION

Income:

<input type="checkbox"/> OAS	<input type="checkbox"/> Provincial Income Assistance
<input type="checkbox"/> GIS	<input type="checkbox"/> DVA
<input type="checkbox"/> CPP	<input type="checkbox"/> Private Pension & Type <input type="text"/>

Assets:

	Bank Name	Bank Address	Account#	Phone	Fax
Bank#1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Bank#2	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Bank#3	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Investment Company	<input type="text"/>				
Personal Property	<input type="text"/>				
Vehicles	<input type="text"/>				
Real Estate:	<input type="checkbox"/> Yes <input type="checkbox"/> No	Address:	<input type="text"/>		
Real Estate Insured?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Name of Insurance Company	<input type="text"/>		

SECTION FOUR: FAMILY OR OTHER CONTACT PERSONS:

Name 1	<input type="text"/>	Name 2	<input type="text"/>
Address	<input type="text"/>	Address	<input type="text"/>
Postal Code	<input type="text"/>	Postal Code	<input type="text"/>
Telephone	<input type="text"/>	Telephone	<input type="text"/>
Email	<input type="text"/>	Email	<input type="text"/>
Relationship	<input type="text"/>	Relationship	<input type="text"/>
Name 3	<input type="text"/>	Name 4	<input type="text"/>
Address	<input type="text"/>	Address	<input type="text"/>
Postal Code	<input type="text"/>	Postal Code	<input type="text"/>
Telephone	<input type="text"/>	Telephone	<input type="text"/>
Email	<input type="text"/>	Email	<input type="text"/>
Relationship	<input type="text"/>	Relationship	<input type="text"/>

Have involved family members/friends been notified about this referral? Yes No

If not, why:

SECTION FIVE: REFERRAL SOURCE

Pursuant to s.17(3) of the *Public Guardian and Trustee Act* (R.S.B.C.1996, c.383), the Public Guardian and Trustee must not disclose or be compelled to disclose the identity of a person who makes a report resulting in an investigation or audit under s. 17 of the *Public Guardian and Trustee Act*.

Referred by:			
Date of referral: (MM/DD/YY)			
Relationship to the Adult being referred:			
Telephone number:		Email:	
Address:			
Apartment/Suite Number	Street	City	Postal Code

PLEASE NOTE: This is the manual submission form. An electronic, fillable submission form is also available on the PGT website at: www.trustee.bc.ca. Please attach any other relevant comments, information, or additional notes pages you have generated. Mail or fax this form to:

Greater Vancouver Regional Office	Lower Mainland Regional Office	Vancouver Island Regional Office	Interior-North Regional Office
700-808 West Hastings St. Vancouver, BC V6C 3L3 Tel: 604.775.1007 Fax : 604.660.9498 <i>email:</i> ClericalRequest6@trustee.bc.ca	700-808 West Hastings St. Vancouver, BC V6C 3L3 Tel: 604.775.1007 Fax : 604.660.9479 <i>email:</i> ClericalRequest6@trustee.bc.ca	1215 Broad Street Victoria, BC V8W 2A4 Tel: 250.356.8160 Fax: 250.356.7442 <i>email:</i> Victoria-Clerical@trustee.bc.ca	1345 St. Paul St. Kelowna, BC V1Y 2E2 Tel: 250.712.7576 Fax: 250.712.7578 <i>email:</i> kpiffa@trustee.bc.ca

Service BC Toll Free Numbers:

In Vancouver: 604.660.2421

In Victoria: 250.387.6121

Elsewhere in BC: 800.663.7867

Personal information on this form is collected by the Public Guardian and Trustee under the authority of the *Public Guardian and Trustee Act* (R.S.B.C.1996, c. 383) and the *Adult Guardianship Act* (R.S.B.C. 1996, c. 6) to determine and put in place any arrangements necessary to protect the legal rights and financial or personal care interests of an adult who may not be able to manage his or her affairs independently. Personal information is collected, used and disclosed by the Public Guardian and Trustee in accordance with the *Freedom of Information and Protection of Privacy Act*.

If you have any questions about the collection of this personal information relating to the *Freedom of Information and Protection of Privacy Act*, please contact the Public Guardian and Trustee Information and Privacy Officer, 700-808 West Hastings Street, Vancouver, BC, V6C 3L3 at Phone: 604. 660.5104.

If you have any questions about your referral or the assessment and investigation process, please contact a Regional Consultant in your regional PGT office listed above.

For Internal Use Only

Case Handler: _____	Case #: _____	HICS: _____ Yes (Attached) _____ No
Date (MM/DD/YY) _____	Comet# _____	InfoCall: _____ Yes (Attached) _____ No
	Screening _____	Provide Service _____

Appendix 5 – Physician Preliminary Opinion of Incapability



PHYSICIAN PRELIMINARY OPINION OF INCAPABILITY UNDER THE *PATIENTS PROPERTY ACT*

The information on this form is collected under the authority of the *Public Guardian and Trustee Act*. Information collected may be used for the purpose of authorizing the Public Guardian and Trustee to act as Committee of Estate through Certificate or court order under the *Patients Property Act*. If you have any questions about the collection and use of this information please contact Assessment and Investigation Services (AIS).

Directions to the Physician:

If requested by the Public Guardian and Trustee, this assessment is to be performed by a medical practitioner, such as a G.P. or psychiatrist. It is designed to obtain information on whether there is a mental disability that affects the adult's ability to make decisions. If you need more space for answers, attach additional sheets and/or a copy of your assessment report. Upon completion you may send a copy to the adult, as well as AIS at the PGT.

1. Adult's Personal Information

Name of the adult being assessed:		
Last Name	First Name	Initial
Date of Birth:		For approximately how long have you been treating the adult?
Month	Day	Year
When did you last examine the adult? Date:		Where did the last examination take place? Place:
Do you anticipate seeing the adult again?		If yes, when will you next see the adult?
<input type="checkbox"/> Yes <input type="checkbox"/> No		

2. Mental Status

Mental Status evaluation to be based on a direct examination of the adult:

Was the Folstein's Mini Mental Status Examination given?	
<input type="checkbox"/> Yes	
<input type="checkbox"/> No	Adult's Score _____/30

What other tests or questions were asked of the adult regarding ability to manage financial and legal affairs (and/or person if applicable) and what responses did the adult give? Attach additional sheets if needed.

Was the adult able to follow simple directions / instructions:

- Yes
- No

Was the adult oriented to time and place?

- Yes
- No

How would you describe the adult's short term memory?

3. Mental Health Status (adapted from the LTC1)

Attitude	Self-Direction	Affect	Thought Content
<input type="checkbox"/> Cooperative <input type="checkbox"/> Indifferent <input type="checkbox"/> Resistive <input type="checkbox"/> Demanding <input type="checkbox"/> Suspicious <input type="checkbox"/> Hostile	<input type="checkbox"/> Independent <input type="checkbox"/> Needs motivation <input type="checkbox"/> Needs direction <input type="checkbox"/> Dependent	<input type="checkbox"/> Appropriate <input type="checkbox"/> Anxious <input type="checkbox"/> Euphoric <input type="checkbox"/> Labile <input type="checkbox"/> Angry <input type="checkbox"/> History of mood swings <input type="checkbox"/> Blunted <input type="checkbox"/> Depressed <input type="checkbox"/> Inappropriate <input type="checkbox"/> Other	<input type="checkbox"/> Normal <input type="checkbox"/> Delusions <input type="checkbox"/> Persecutory <input type="checkbox"/> Guilt <input type="checkbox"/> Obsessions <input type="checkbox"/> Phobias <input type="checkbox"/> Preoccupation <input type="checkbox"/> Other <input type="checkbox"/> Not able to assess

Perceptions	Cognition	Insight	Judgement	Other
<input type="checkbox"/> Normal <input type="checkbox"/> Hallucinations <input type="checkbox"/> Auditory <input type="checkbox"/> Visual <input type="checkbox"/> Other	<input type="checkbox"/> Normal <input type="checkbox"/> Impairment <input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe	<input type="checkbox"/> Good <input type="checkbox"/> Partial <input type="checkbox"/> None	<input type="checkbox"/> Good <input type="checkbox"/> Adequate <input type="checkbox"/> Poor	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

4. Communication Skills

Comment on responsiveness, vocabulary loss, etc.:

5. Medical and Psychiatric Diagnoses

Medical Diagnoses:

Psychiatric History:

Psychiatric Diagnoses:

Prognosis:

6. Functional Status

Is the adult able to perform simple financial transactions?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
Is the adult aware of the nature and extent of his/her finances?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
Is the adult able to do his or her own banking?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
Is the adult able to do his or her own shopping?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
Is the adult able to carry out other activities of daily living?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No

If no, please provide examples of activities that the adult cannot carry out:

7. Statement of Opinion of Capability to Manage Legal or Financial Affairs

- The adult is capable of managing his or her own financial affairs or legal affairs, or
- The adult has a mental disorder / disability that renders him / her incapable of making decisions regarding financial or legal affairs, or
- I am unable to provide an opinion based on available information and recommend further assessment.

Prognosis: Is the adult's ability to manage his or her affairs likely to improve?

Other Comments:

8. Notification

(Note: a copy of this form may be shared with the adult)

Has the adult been notified of this assessment?

Yes

No

If no, why not?

If the adult has been assessed as incapable of managing financial and legal affairs, please complete the following:

In your opinion would it be injurious to the health of the adult to serve him or her with copies of all the documents relating to the application to appoint a Committee?

Yes

No

If yes, please provide an explanation.

Name of Physician (please print)

Dr. _____
Last Name First Name Initial

Signature: _____

Date: _____

Telephone Number: _____ Fax Number: _____

Return this form to:

Greater Vancouver Region

700-808 West Hastings St.
Vancouver, BC V6C 3L3
Tel: 604.775.1007
Fax : 604.660.9498

Lower Mainland Region

700-808 West Hastings St.
Vancouver, BC V6C 3L3
Tel: 604.775.1001
Fax: 604.660.9479

Vancouver Island Region

1215 Broad Street
Victoria, BC V8W 2A4
Tel: 250.356.8160
Fax: 250.356.7442

Interior-North Region

1345 St. Paul St.
Kelowna, BC V1Y 2E2
Tel: 250.712.7576
Fax: 250.712.7578

OR RETURN YOUR FORMS VIA EMAIL:

mail@trustee.bc.ca

**Enquiry BC Toll Free Number:
Vancouver: 604.660.2421,
Victoria: 250.387.6121
or elsewhere in BC: 1.800.663.7867**

Appendix 6 – Director’s Checklist for Issuing a Certificate of Incapability under the Patients Property Act

Name of the Adult:			Adult’s Date of Birth:
Last Name	First Name	Middle Initial	Month / Day / Year

This checklist is intended as a tool to assist the Director of a facility designated under the *Mental Health Act* when making a decision to issue a Certificate of Incapability under the *Patients Property Act*.

- The adult and family have been informed of the assessment and the outcome.
- Other less intrusive measures have been considered and found insufficient.
- The adult does not have an Attorney under a Power of Attorney or a Representative under the *Representation Agreement Act* who can appropriately assist.
- I am not aware of anyone appropriate who can apply to court to be appointed as Private Committee.
- The Public Guardian and Trustee has been involved and is in agreement to issue a Certificate.
- The following forms have been received and reviewed:
 - Public Guardian and Trustee Referral Form and any attached collateral information gathered by PGT
 - Physician’s Opinion of Incapability and any attached assessment reports
 - Functional and Decision Making Assessment and any attached assessment reports
- The assessments consistently indicate that the adult is incapable of managing his or her own financial and legal affairs.

Has the adult been notified of the intent to issue the Certificate of Incapability? If not, why?

Have relevant family members been notified of the intent to issue the Certificate of Incapability? If not, why?

Decision of the Director

It is the conclusion of the Director that the assessment has found:

- The adult has a mental disorder/disability
- The adult is incapable of managing his/her financial and legal affairs
- The adult requires the PGT to act as Committee of Estate

It is the decision of the Director to:

- Issue a Certificate of Incapability under the *Patients Property Act* following notification
- Not issue a Certificate of Incapability

Comments / Rationale for Decision:

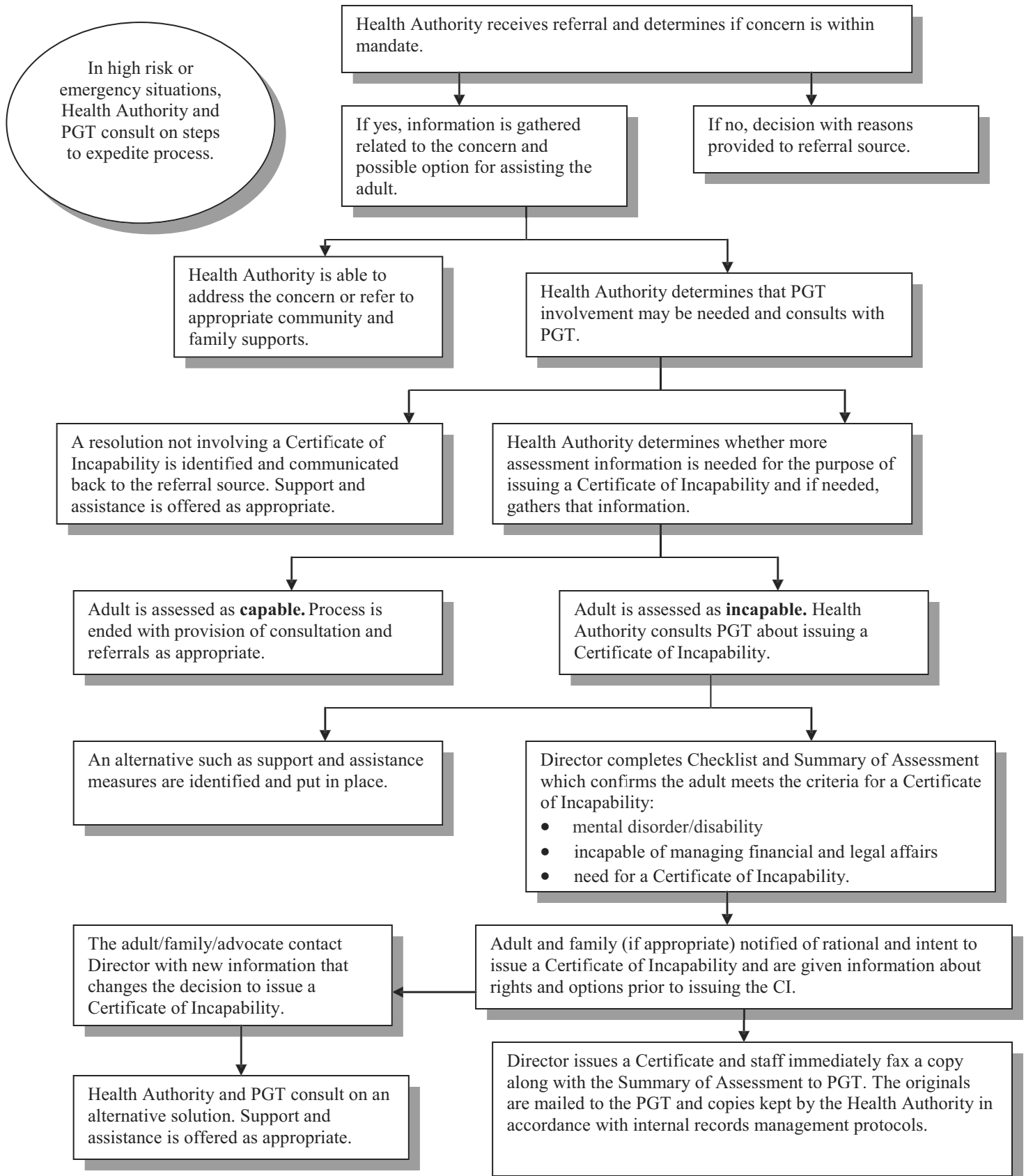
Date for review of adult’s incapability to make financial and legal decisions: _____

Name of Director

Signature

Date

Appendix 7 – Issuing a Certificate of Incapability - Role of the Health Authority



Appendix 8 – Functional and Decision Making Assessment Form

The information on this form is collected under the authority of the *Public Guardian and Trustee Act*. Information collected may be used for the purpose of authorizing the Public Guardian and Trustee to act as Committee of Estate through Certificate or court order under the *Patients Property Act*. If you have any questions about the collection and use of this information, please contact Assessment and Investigation Services in your region.

Directions to the Assessor

This assessment may be performed by a clinician or professional health care worker who is an experienced assessor and who has a reasonable rapport with the client. The goal of assessment is to obtain information on the capacities of the person to manage their financial and legal affairs. Please review all referral and available collateral information. If you need more space for answers, attach additional sheets.

SECTION ONE: Assessment Information

Name of the Adult:			Adult's Date of Birth:
Last Name	First Name	Middle Initial	<i>Month / Day / Year</i>
Location of the Assessment:			Date of Assessment:
			<i>Month / Day / Year</i>

Assessor/Assessment Team Information

Name	Agency	Position	Contact Information
			Phone: Fax: Email:
			Phone: Fax: Email:

Please list the standards, tools or tests you used as part of this assessment and attach a copy of your assessment report.

Assessment Report Attached?

- Yes
 No

SECTION TWO: Communication

Does the adult speak and understand English? <input type="checkbox"/> Yes <input type="checkbox"/> No	If no, with what language or form of communication is the adult most comfortable?
Does the adult require communication supports? <input type="checkbox"/> Yes <input type="checkbox"/> No	If yes, what communication supports are required?
If someone who assists with communication is available, please include the name and phone number.	

SECTION THREE: Understanding of the Problem

Briefly describe the problem:
How long has the problem existed?
Briefly describe the adult's understanding of the problem. Does the adult understand why he or she is being assessed?
If the adult does not understand, what appears to be preventing understanding?
If the adult expresses understanding, does the adult have suggestions for handling this problem? Are these ideas reasonable considering the problem?

SECTION FOUR: Collateral Information Sources Relevant to the Assessment of Incapability

Please add any new or additional contact information to the Referral Form or attach on a separate piece of paper.

Who are the people available to the adult?

<input type="checkbox"/> Spouse	<input type="checkbox"/> Other Relatives	<input type="checkbox"/> Banker
<input type="checkbox"/> Children	<input type="checkbox"/> Friends	<input type="checkbox"/> Lawyer
<input type="checkbox"/> Parent	<input type="checkbox"/> Others	<input type="checkbox"/> Health Care Worker

Of the people available to the adult, who was contacted for collateral information and why?

Of the people available to the adult, who was not contacted for collateral information and why?

What information was gained through the collection of collateral information in regard to the assessment and potential need for a Certificate? Be specific.

Is more collateral information needed? If so, what collateral information is required?

SECTION FIVE: Understanding of Financial and Legal Affairs

Use the following questions as a guide to determine the financial situation of the adult and the adult's functional ability to manage his/her financial and legal affairs. In your assessment report, please record the adult's response, information collected from collateral sources and your opinion. Use the chart below to summarize your concerns.

Items to be explored with the adult and collateral information sources	Assessor's concerns
1. Do you know your income and its sources?	
2. Do you know what regular bills you need to pay?	
3. Do you have any debt?	
4. Do you have any assets?	
5. Do you have investments or property?	
6. Have you ever needed the help of a lawyer? When and for what?	
7. Do you have a Power of Attorney or is anyone helping you manage your money?	
8. Do you have a will?	
9. Do you have a bank account? Is there anyone else on this account?	
10. Do you have a credit card?	
11. Do you have a pension from work?	
12. How do you get to the bank?	
13. Do you write cheques? Use a bank debit card?	
14. Do you ever run out of money for food or worry about your rent?	
15. Do you have family or friends who come to you for money?	
16. Do you keep money in your purse/wallet?	
17. Do you give money to charity?	

SECTION SIX: Summary

How was the adult notified of this assessment?

- Mail
- Phone
- In Person
- No Notification If no notification, please explain.

Has the adult's ability to make decisions or problem solve become significantly worse when compared with his or her abilities in the past?

Has the possibility for pension trusteeship, a Power of Attorney, a Representation Agreement or a Committeeship (as appropriate to the adult's capability) been discussed with the adult? Please give a summary of these discussions or reasons why this has not happened.

Does the adult understand that the Public Guardian and Trustee may be appointed to manage his or her financial or legal affairs?

- Yes
- No

Is there a discrepancy between the adult's answers and collateral information or your observations?

- Yes
- No

If so, please describe:

Has the adult expressed any wishes regarding who he or she would like to act as Committee?

- Yes
- No

Name of the person:

Relationship to the adult:

Reason why the adult would like this person to act as Committee:

Describe the plan in place to notify the adult of the outcome of the assessment.

SECTION SEVEN: Opinion - Assessment of Incapability

In your opinion (check one):

- The adult is **capable** of managing his or her own financial or legal affairs, **or**
- The adult has a mental disorder / disability that renders him / her **incapable** of making decisions regarding financial or legal affairs.

My opinion is based on the following (please check as appropriate):

- Referral information
- Functional and decision making capability assessment
- Medical and psychiatric assessments
- Collateral information

This opinion has been provided by:

Name/Signature		Agency	Position
Print Name	Signature		
Print Name	Signature		

Date: _____

Appendix 9 – Sample Client Notification Letter

File No:

@ date

@ name

@ address

@ city

@ postal code

Dear (Adult):

Assessors met with you at ____ (location) on _____ (date) because of concerns about your ability to manage your financial and legal affairs. Based on that assessment, it has been determined that you are incapable of managing your financial and legal affairs on your own, and that you are in need of support. A Summary of Assessment, which is a summary of the findings, is attached.

To get you the support you need, it is my intention to issue a Certificate of Incapability which will make the Public Guardian and Trustee of British Columbia your Committee of Estate. As your Committee of Estate, the Public Guardian and Trustee will plan with you to best meet your financial and legal needs.

If you do not agree with my decision to issue a Certificate of Incapability and have further information that should be taken into consideration, please contact me at _____ (contact phone number) by _____ (date). Otherwise I will issue the Certificate of Incapability on _____ (date).

Sincerely,

Signature of Director

Appendix 10 – Sample Family Notification Letter

File No.

@date

@name

@company

@address

@city

@postal code

Dear (Family Member):

Assessors met with your (relative, and the adult's name) at ____ (location) on _____ (date) because of concerns about his/her ability to manage his/her financial and legal affairs. Based on that assessment, it has been determined that he/she is incapable of managing his/her financial and legal affairs on his/her own, and that he/she is in need of support. [A Summary of Assessment, which is a summary of the findings, is attached - optional.]

To provide (adult's name) with the support he/she needs, it is my intention to issue a Certificate of Incapability which will make the Public Guardian and Trustee of British Columbia his/her Committee of Estate. As Committee of Estate, the Public Guardian and Trustee will plan with (adult's name) to best meet his/her financial and legal needs.

If you do not agree with this decision to issue a Certificate of Incapability and have further information that should be taken into consideration, please contact me at _____ (contact phone number) by _____ (date). Otherwise I will issue the Certificate of Incapability on _____ (date).

Sincerely,

Signature of Director

SAMPLE SUMMARY OF ASSESSMENT
PURSUANT TO A DETERMINATION OF INCAPABILITY UNDER
THE PATIENTS PROPERTY ACT

(Name of adult), born on (date of birth) was assessed to determine whether (he/she) is mentally incapable of managing (his/her) financial and legal affairs. The reason for the referral was (provide reason but no information to identify the parties who reported the concern).

An assessment of (name of adult)'s functional and decision making capability was conducted by (name of assessor or team) on (date). The assessor is of the opinion that (state opinion and provide examples of tests or tools used)

Dr. (name) (indicate general practitioner, psychiatrist or psychologist) examined (name of adult) on (date) and determined that (name of the adult) has a (description of medical condition) which affects his/her ability to manage his/her affairs.

Signature of Director

Date

Name (Please Print)

Appendix 12 – Sample Certificate of Incapability

[INSERT YOUR LOGO or HEALTH AUTHORITY LETTERHEAD HERE]

**PROVINCE OF BRITISH COLUMBIA
CERTIFICATE OF INCAPABILITY
Issued Pursuant to Section 1(a) of the
*Patients Property Act R.S.B.C. 1996, Chapter 349***

Date _____

Patient Name _____

Date of Birth _____

Date of Assessment(s) _____

I have reviewed the assessment(s) of (name of Patient) and hereby declare the above named to be incapable of managing his/her financial and legal affairs, due to mental infirmity arising from disease, age, or otherwise.

The effect of the issuance of this Certificate is that the Public Guardian and Trustee of British Columbia is the Committee of the Estate of the above-named patient, pursuant to Section 6(3) of the *Patients Property Act R.S.B.C., 1996, Chapter 349*.

SIGNATURE OF DIRECTOR

PRINT NAME OF DIRECTOR

[Director for the purposes of the *Patients Property Act* as authorized by (name of Health Authority)]

cc:

Appendix 13 – Sample Certificate of Capability

[INSERT YOUR LOGO or HEALTH AUTHORITY LETTERHEAD HERE]

**PROVINCE OF BRITISH COLUMBIA
CERTIFICATE OF CAPABILITY
Issued Pursuant to Section 11(1)(d) of the
*Patients Property Act R.S.B.C. 1996, Chapter 349***

Date _____

Patient Name _____

Date of Birth _____

Date of Assessment(s) _____

I hereby certify that I am of the opinion that (full name of adult) is no longer incapable of managing his/her own affairs.

The effect of the issuance of this Certificate is that the Public Guardian and Trustee of British Columbia is no longer the Committee of the Estate of (full name of adult) by virtue of s. 11(1) (d) of the *Patients Property Act R.S.B.C., 1996, Chapter 349*.

SIGNATURE OF DIRECTOR

PRINT NAME OF DIRECTOR

[Director for the purposes of the Patients Property Act as authorized by (name of Health Authority)]

cc:

Appendix 14 – Sample Confirmation of Discharge

[Issuing Agency's Letterhead]

**PROVINCE OF BRITISH COLUMBIA
CONFIRMATION OF DISCHARGE**

*PROVINCE OF BRITISH COLUMBIA
CONFIRMATION OF DISCHARGE
Issued pursuant to Section 11 (1) (a) of the
Patients Property Act RSBC, Chapter 349, 1996*

Date:

I, (full name) Director of (name of designated facility) hereby confirm that (full name of adult, date of birth) has been discharged and is no longer a patient as defined under the *Mental Health Act*.

The effect of the issuance of this confirmation is that the Public Guardian and Trustee may, at his discretion, decide not to continue to act as Committee of Estate for (name of adult) by virtue of section 11 (2) of the *Patients Property Act R.S.B.C. 1996, chapter 349*.

Signature of Director

Name (Please Print)



PUBLIC GUARDIAN
AND TRUSTEE OF
BRITISH COLUMBIA

Suite 700-808 West Hastings Street, Vancouver, BC V6C 3L3
Telephone: 604.660.4444 Fax: 604.660.0374 Website: www.trustee.bc.ca