

# PRIVATE COMMITTEE HANDBOOK



PUBLIC GUARDIAN  
AND TRUSTEE OF  
BRITISH COLUMBIA

## **Private Committee Services Department**

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## TABLE OF CONTENTS

<b>Introduction</b> .....	<b>1</b>
How To Use This Book.....	1
Some Words To Know .....	1
A Position of Trust .....	1
The <i>Patients Property Act</i> .....	2
The Public Guardian and Trustee of British Columbia .....	2
The <i>Trustee Act</i> .....	2
The Common Law .....	2
The Court Order.....	3
Sample Court Order .....	4
<b>Chapter 1 – The Private Committee</b> .....	<b>6</b>
What Authority does a Committee Have? .....	6
Committeeships and Power of Attorney .....	7
Committee of the Person.....	7
Ending a Committeeship .....	7
Person Becomes Capable .....	7
Person Moves to Another Province or State .....	7
You Can No Longer Act.....	8
Someone Else Applies .....	8
Death of the Committee .....	8
Death of the Person Whose Affairs You Manage .....	8
<b>Chapter 2 – The Public Guardian and Trustee of BC</b> .....	<b>9</b>
The Public Guardian as Committee .....	9
Review of Your Committee Application .....	9
Overseeing the Private Committee.....	9
The Committee Review Officer.....	9
Your Address and Contact Information .....	9
Fees Charged by the Public Guardian and Trustee .....	10
How To Contact the office of the Public Guardian and Trustee .....	10

## TABLE OF CONTENTS

---

<b>Chapter 3 – Getting Started .....</b>	<b>11</b>
Obtain a Copy of your Court Order .....	11
Paying the Legal Bill .....	11
The Bond Requirement .....	11
Capital Restrictions .....	12
Establishing Bank Accounts .....	12
Setting Up Your Records.....	12
To Do List.....	13
Sample Affidavit for Accounts Passing .....	15
<b>Chapter 4 – Preparing Your Accounts.....</b>	<b>16</b>
Record Keeping Example.....	16
Submitting Your Accounts .....	16
The Summary of Accounts .....	16
Statutory Declaration.....	16
Other Required Documents.....	16
Certificate of Approval.....	17
Your Fee.....	17
How We Calculate Your Fee .....	17
Your Income Tax .....	17
<b>Chapter 5 – Your Investment Decisions.....</b>	<b>18</b>
Prudent Investor Requirement.....	18
Investment Risks .....	18
Professional Assistance .....	19
Identify the Person’s Financial Objectives/Goals .....	19
Develop an Investment Plan/Strategy .....	20
Investment Options .....	20
Insured Deposits .....	20
Personal Loans .....	21
Real Estate .....	21
Gold, Art and Other Investments .....	21
Investor Education Kit .....	21
Review of Investments .....	22

**Chapter 6 – Your Discretion ..... 23**

Act Reasonably and Prudently ..... 23

If You Are The Spouse..... 23

Dealing With Real Estate ..... 23

Automobiles..... 24

Furnishings and Personal Effects ..... 24

Bank Accounts ..... 25

Joint Accounts..... 25

Income ..... 25

Expenses ..... 25

Pensions and Benefits ..... 26

Income Tax..... 26

Business Affairs ..... 26

Interest in a Trust ..... 26

Legal Affairs ..... 26

Assisting the Family ..... 27

Maintenance For a Spouse ..... 27

Gifts to Family Members..... 27

Conflict of Interest..... 28

Hiring Professional Help ..... 28

Writing a Will ..... 28

Marriage ..... 29

**Chapter 7 – Committee of Person ..... 30**

Health Care Decisions ..... 30

Restricted and Prohibited Treatments ..... 31

Residential and Facility Admission Decisions ..... 32

Access Decisions..... 32

## TABLE OF CONTENTS

---

<b>Chapter 8 – Record Keeping Example.....</b>	<b>34</b>
How To Set Up Your Journal .....	34
The Example .....	34
Getting Started.....	37
Setting Up Your Ledger Columns .....	38
Using Your Ledger.....	38
Balancing Your Ledger.....	38
Summary of Accounts .....	39
<b>Chapter 9 – Definition of Terms .....</b>	<b>56</b>
<b>Chapter 10 – Conclusion .....</b>	<b>58</b>
<b>Appendix .....</b>	<b>59</b>
<i>Trustee Act</i> , sections 15.1 to 20 .....	59
<i>Patients Property Act</i> .....	62

## INTRODUCTION

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

### **How to Use this Book**

You may want to read through the handbook now to get a better idea about a Committee's responsibilities. The handbook contains valuable information - keep it on hand so that you can refer to it as new questions arise.

### **Some Words to Know**

First, there are a few words you will need to know. They are words you may be familiar with but they have special meanings in this handbook.

Committee: This looks like a familiar word but it is pronounced differently, ("Kaw-mit-tee" with the accent on the last syllable). You, the Committee, are the person appointed by the Court to manage the affairs of someone who is mentally incapable.

Committee of Person: If you have also been appointed as Committee of Person, this means that you have the authority to make decisions related to the person's physical needs - for example, decisions about health care and where the person will live.

Committee of Estate: As Committee of the Estate, you manage all the person's financial, business and legal affairs. This may include no more than apartment furnishings, and a pension, or it may be very large and complex.

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

### **A Position of Trust**

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

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

### **The *Patients Property Act***

This is the provincial law, which gives the Supreme Court of British Columbia the authority to appoint Committees. The Act uses the word “patient” to describe people who are no longer able to manage their affairs. It sets out the procedure for applying for a Committeeship order and defines the authority of the Committee. It also gives the Court the power to put restrictions on that authority. If the Court has done so in your case, these restrictions will appear in your Order. The Act also requires the Committee to maintain proper records and to present accounts to the Public Guardian and Trustee for approval. You can see a copy of the *Patients Property Act* at any public library, on our website link at [www.trustee.bc.ca](http://www.trustee.bc.ca) or you can order a copy from your local government agent or from Queen’s Printer in Victoria. We have also attached amendments to section 24 of the Act in the Appendix of this book.

### **The Public Guardian and Trustee of British Columbia**

The Public Guardian and Trustee is required by the *Patients Property Act* to ensure that the financial and legal affairs of all people declared incapable by the Courts are properly looked after. In some cases, this means that the Public Guardian and Trustee acts as Committee. In other cases, such as yours, a private person acts as Committee of Estate and the Public Guardian and Trustee has authority to monitor or investigate, if necessary. Generally our role is to review the accounts you submit at specific intervals and approve them if they are in order.

As part of this process, the Public Guardian and Trustee has developed a set of guidelines and procedures for the passing (approval) of accounts. You will find more information in Chapters 2 and 4 of this handbook. The Committee Review Officer assigned to you will be pleased to answer any questions you have. If you have also been appointed as Committee of Person, we will monitor your decision-making related to health and residence issues. The Public Guardian and Trustee may have an additional role if the court has applied restrictions to your authority.

### **The *Trustee Act***

As a Committee, you are considered a trustee when you invest money. This means that the *Trustee Act* will outline the approach to take in your investment decision-making. The *Trustee Act* philosophy is that a trustee must make investment decisions as a prudent investor would. This helps to ensure that the person whose money is invested is protected from unreasonable risk.

### **The Common Law**

Besides the specific requirements contained in the *Patients Property Act*, there is general or “common” law that has developed over many years to cover situations where one person is acting on behalf of another. There is a general requirement that you act reasonably and prudently and in the best interests, not of yourself, but of the person for whom you are acting. You are considered a fiduciary and must always place the adult’s interests before your own. If you are in doubt about your situation, do not hesitate to ask for guidance from your Committee Review Officer.

**The Court Order**

Your lawyer will provide you with copies of the Court Order appointing you as Committee. This will be your direct authority to act as Committee. It will remain in effect until another Court Order says otherwise, or until an Executor or Administrator is appointed after the person for whom you are Committee dies. The Order may place certain restrictions on your authority - for example, it may say that you cannot sell any of the person's real estate, without getting permission from the Public Guardian and Trustee.

You may obtain extra copies of your Court Order from the Court Registry through which you were appointed as Committee. Also, you may wish to obtain a few certified copies of the Order from your lawyer or the Registry because some institutions (for example, many banks) will require one in order to honour your authority.

The Court Order gives you the authority to protect and secure the property of the person for whom you are Committee. As Committee, your actions must be in keeping with the Court Order.

The following pages introduce you to a typical Court Order and describe each section of the order.

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

**MARY SMITH**

ORDER

BEFORE THE MASTER ) TUESDAY, THE 31<sup>ST</sup>  
 ) DAY OF MAY, 2003

1 UPON THE APPLICATION of the Petitioner coming on for Hearing on this day at Victoria and on hearing Jane Q. Lawyer, Counsel for the Petitioner; AND UPON READING the Petition of John Doe and the Affidavit of Kindred and Fortune in Support of an Application for Appointment of Committee of Mary Smith, sworn the 30th day of April, 2003 and the Affidavit of Doctor Black, sworn the 4th day of April, 2003, and the affidavit of Doctor Slims sworn on the 29th day of April, 2003 and filed; AND UPON READING the letter of approval from the Public Guardian and Trustee of the Province of British Columbia, dated May 15, 2003;

2 THIS COURT ORDERS that the above-named MARY SMITH is by reason of mental infirmity arising from disease and age incapable of managing herself or her affairs;

3 THIS COURT FURTHER ORDERS that the Petitioner, John Doe, be and is hereby appointed as Committee of the person and estate of Mary Smith.

4 THIS COURT FURTHER ORDERS that the Committee be and is hereby required to post a bond with a corporate surety in the amount of ONE HUNDRED NINETY-TWO THOUSAND (\$192,000.00) DOLLARS in the name of the Public Guardian and Trustee, approved by the Registrar of the Supreme Court of British Columbia, and filed with the Public Guardian and Trustee.

5 AND THIS COURT FURTHER ORDERS that John Doe is restricted from selling or otherwise disposing of the real property of Mary Smith located at 921 West Road without further Order of the Court.

6 THIS COURT FURTHER ORDERS that the Petitioner shall be paid his reasonable costs and expenses of and incidental to this application out of the estate of the said MARY SMITH, as approved by the Public Guardian and Trustee.

BY THE COURT

\_\_\_\_\_  
SOLICITOR FOR THE PETITIONER

\_\_\_\_\_  
DEPUTY DISTRICT REGISTRAR

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

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

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

## **2. Declaration of Incapability**

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

The phrase “incapable of managing his or her affairs” means that the person is unable to make decisions about his or her financial and legal matters.

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

## **3. Appointment of Committee**

After the declaration of incapability, the Order goes on to appoint you Committee (or co-Committees).

## **4. Bond**

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

## **5. Restrictions**

The court can make any restrictions on your power that it sees fit. This may include restrictions in dealing with specific investments unless you have written consent from the Public Guardian and Trustee or Court.

## **6. Costs**

The last provision in the Order may deal with costs of the application, that is, your lawyer’s bill. The reasonable costs of the application to obtain the order may be paid from the account of the person whose affairs you manage if the Court Order allows.

## Chapter 1 - THE PRIVATE COMMITTEE

### What Authority Does a Committee Have?

A Committee of Estate steps in to take over financial, business and legal affairs for someone who is no longer capable of looking after these matters. The Committee may be a friend, family member, or business associate, or it may be the Public Guardian and Trustee. Once a Committee is appointed, he or she has very broad powers. The *Patients Property Act* says:

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

In other words: the Committee can do almost anything the person could do for him or herself, if he or she were mentally capable. There are some limits to this power. A Committee does not have the authority to:

- contract marriage for the person (but may begin divorce proceedings in certain circumstances),
- vote in elections for the person,
- draw up a new Will or change the existing Will, or
- make estate-planning decisions (eg., change the designation of beneficiaries on insurance policies or RRSP's).
- act for the adult in criminal proceedings in which the adult is an accused (but may retain a lawyer for the adult).

Sometimes the Court appoints more than one Committee (co-Committees) to manage the person's affairs. All the Committees have equal rights and responsibilities in managing the person's affairs, are jointly responsible for their management of the person's affairs, and are expected to work together.

Within this book, we usually use the term “Committee” singularly, but if you are in a co-Committeeship (more than one Committee was appointed), you can replace references to the word “Committee” with “co-Committees”.

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

The Committee will ensure that income tax returns are filed and look after any legal matters that the person might be involved in. These are only examples of the wide range of services that Committees perform.

## **Committeeships and Power of Attorney**

Unless the Court Order granting a Committeeship states differently, the appointment of Committee by the Supreme Court of British Columbia terminates all Powers of Attorney and Representation Agreements. Power of Attorney gives someone the authority to act on another's behalf, as does a Committeeship. But there is an important difference. A person must have the mental capacity to manage his or her financial and legal affairs in order to grant a Power of Attorney. It is generally used where the person giving the Power of Attorney is unable - either because of physical disability or because of geographic distance -to perform some tasks such as depositing cheques or completing a real estate transaction.

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

You may have held a Power of Attorney before, for the same person who is now the subject of your Committeeship order, but your rights and responsibilities now are quite different. As Committee, you must make the decisions, and not merely act on instructions.

## **Committee of the Person**

You may be Committee of both the Estate and Person. The duties of the Committee of the Person involve making decisions about personal care, such as admission to a hospital and consent to medical treatment, or where to live. You can read more about Committee of Person in Chapter 7. Committee of Estate and Person issues are often closely related to each other, as the money available often affects personal care decisions.

## **Ending a Committeeship**

There are several ways that a Committeeship can come to an end:

### Person Becomes Capable

It would be inappropriate to continue acting as Committee if the individual is now capable of looking after himself. If this happens, you should assist the person with consulting a doctor to confirm that the person is in fact capable of making his or her own decisions. Then, contact a lawyer to obtain a Court Order to declare the person capable and have them release you as Committee.

### Person moves to another province or state

If the person whose affairs you manage moves to a region outside of BC, and all their assets are moved with them, then we will need certain documents from you. We will require a copy of documentation from you confirming that there is a Committeeship or equivalent guardianship in place in the new province/state. We will also need to review and pass a copy of your Committeeship accounts up to the date you obtained your new authority. If the person moved, but their assets remain in BC, the Committeeship can stay in effect, with your regular reporting responsibilities to our office. However, you may find that the new jurisdiction will not honour your authority.

### You Can No Longer Act

If you are no longer willing or able to act as Committee, you can have a lawyer apply for a Court Order ending your Committeeship and appointing someone in your place. You will probably need to have your accounts approved by the Public Guardian and Trustee up to the date of the Order.

### Someone Else Applies

If someone else wishes to be appointed Committee, instead of you, that person may apply for a Court Order appointing him or her and ending your Committeeship. You will be notified by the applicant if this kind of application is made.

### Death of the Committee

If you should die before the person whose affairs you manage, your Executor or Administrator are responsible for finalizing your accounts. The Public Guardian and Trustee automatically becomes Committee on your death, until the Court appoints someone else.

### Death of the Person Whose Affairs You Manage

If the person whose affairs you manage dies, your authority as a Committee continues until the formal appointment of an Executor or Administrator of his or her estate. This is stated in the *Patients Property Act*, Section 24 (see Appendix). You should be aware that your authority does not include any estate distribution powers nor permit a change of registration of assets like Real Property. You are simply expected to maintain the estate “status quo” until a legal representative (Executor or Administrator) has been appointed to administer the estate. Usually, the Executor or Administrator is involved in making the funeral arrangements. Please contact the Public Guardian and Trustee’s office at (604) 660-4476 to report the death, and to obtain further information and assistance to conclude the Committeeship.

## Chapter 2 - THE PUBLIC GUARDIAN AND TRUSTEE OF BC

### **The Public Guardian and Trustee as Committee**

The Public Guardian and Trustee of British Columbia has many different functions, including acting as Committee in cases where no one else can act. The Public Guardian and Trustee provides an efficient, professional service as Committee but it cannot provide the depth of personal attention that an individual who has a long-standing close relationship with the adult can provide as a Private Committee.

### **Review of Your Committee Application**

Before you were appointed as Committee, all the documents were served on the Public Guardian and Trustee. They were reviewed and recommendations were made to the Court respecting the medical evidence, bonding requirements and any restrictions to be placed on your authority.

### **Overseeing the Private Committee**

In cases such as yours, where a private person is acting as Committee, the Public Guardian and Trustee still has a role to play. The *Patients Property Act* requires the Public Guardian and Trustee to ensure that Private Committees act according to law. If we have concerns or if someone contacts us with concerns about your management of the financial, health or personal affairs of the adult, we have a responsibility to collect information, conduct an investigation and possibly pursue a rescission of your order.

### **The Committee Review Officer**

Once you are appointed, the Public Guardian and Trustee assigns you a Committee Review Officer. The Officer will:

- provide information to you in the management of the estate;
- provide a framework for you if you are faced with making complex decisions as to what options you might choose, factors to consider, whatever might comprise a prudent decision-making process;
- determine that your actions are proper and in the interest of the person for whom you are Committee;
- review your accounts according to the standards established by the Public Guardian and Trustee and the Courts;
- make recommendations regarding the approval of your Committeeship accounts to the Public Guardian and Trustee; and
- make recommendations regarding the approval of a fee (remuneration) for your services as Committee.

### **Your Address and Contact Information**

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

### Fees Charged by the Public Guardian and Trustee

The Public Guardian and Trustee of British Columbia charges fees as set out in the *Public Guardian and Trustee Act Fee Regulation*. Here is a list of some of the fees we charge.

	Fee	GST (6%)	Total
Reviewing an application for Committeeship	\$500.00	\$30.00	\$530.00
Reviewing Subsequent Court Applications	\$300.00	\$18.00	\$318.00
Court discharge of Committee	\$200.00	\$12.00	\$212.00
<b>Reviewing Accounts:</b>			
<b>Gross Estate Value</b>	<u>Fee for each 12-month (1 year) period</u>		
\$25,000 to \$100,000	\$125.00	\$ 7.50	\$132.50
over \$100,000 up to \$300,000	\$250.00	\$ 15.00	\$265.00
over \$300,000 up to \$500,000	\$325.00	\$ 19.50	\$344.50
over \$500,000	\$500.00	\$ 30.00	\$530.00

These fees are paid from the estate of the person whose affairs you manage and may be subject to change. Goods and Services Tax (GST) is charged on all fees.

There is no fee for reviewing accounts where the asset value is less than \$25,000.

### How to Contact the Office of the Public Guardian and Trustee

If you call the office and do not know the name of your Committee Review Officer, give the switchboard operator the last name of the person whose affairs you manage. The operator will connect you with your Committee Review Officer.

#### Private Committee Services Department Public Guardian and Trustee of British Columbia

#700 - 808 W. Hastings Street

Vancouver, BC V6C 3L3

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

**Phone:** 604-660-1500

**Fax:** 604-660-4456

**Email:** [mail@trustee.bc.ca](mailto:mail@trustee.bc.ca)

## Chapter 3 - GETTING STARTED

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

Your authority as Committee begins when the court hearing appointing you as Committee occurs and the judge makes the Order. When you receive your Court Order from your lawyer, you should start by carefully reading it. You should be aware of any restrictions or limitations that it places on you.

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

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

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

A sample Court Order is on page 4, at the end of the Introduction.

### **Paying the Legal Bill**

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

Please include copies of all legal bills pertaining to the adult's estate when you present your accounts, although you will have paid them as they became due. Refer to our fact sheet "Assessing Your Legal Bill" (available at [www.trustee.bc.ca](http://www.trustee.bc.ca)) for further details.

### **The Bond Requirement**

A typical Committeeship Order may require the Committee to post a bond for all or part of the value of the assets you are administering. This is like insurance. A requirement to post a bond is a routine method the Court uses to ensure that the property is not at risk. If a beneficiary of a bond should personally suffer financial loss due to mismanagement, the bonding company would pay for the loss and then collect the money from you.

The cost of a bond is paid from the estate of the person whose affairs you manage. The premium is based on the amount of the bond. There are a number of insurance agencies that provide bonds and you are free to ask several of them to tell you what the costs and conditions would be, before choosing one.

Your lawyer will ensure that the bond is approved by the District Registrar and filed with the Public Guardian and Trustee as part of the process of obtaining the Court Order.

### **Capital Restrictions**

Some Court Orders will include paragraphs restricting the Committee's access to particular assets, instead of bonding. An example would be a restriction to the Committee's access to a term deposit without the Public Guardian and Trustee Office's permission or by further Court Order. If there are restricted assets listed in your Court Order which you would like to deal with in some way, and you need to obtain our permission, you will need to submit a request to us in writing. If you need to obtain the Court's approval, ask your lawyer to prepare the relevant materials for the court application.

### **Establishing Bank Accounts**

You must maintain a bank account in the name of the person for whom you are Committee that is separate from your own bank account, unless: you are Committee for your husband or wife and you have been operating a joint account; if the adult had a joint account with you at the time of his or her incapacity, you can either transfer the client's share of the account to a new account in his/her name alone, remove your name from the account, or suspend regular deposits and withdrawals so the balance remains unchanged. Where the client had a joint account with their spouse (even if the spouse is a committee), the account can remain joint and continue to be used as it was prior to the committeeeship.

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

If there is more than one Committee, then you can decide whether you want only one person to sign documents related to the account (for example, cheques) or if you want to always have more than one signature on the accounts. Make these arrangements with the financial institution.

Another tip that will make record keeping easier: when making a deposit, always deposit the full amount and then write a cheque for the amount you want to withdraw (rather than depositing only the difference). In fact, you should use cheques or direct debit as a method of payment whenever possible, to help you keep track of expenditures.

You should set up a separate account for savings and investment purposes only, but don't use more bank accounts than necessary as it will only complicate your job.

### **Setting up your Records**

You will present your first Summary of Accounts to the Public Guardian and Trustee one year after your appointment (for more details, see the next chapter) but it is important that you set up your records properly now, so that you will have all the necessary information when you need it.

You are not expected to have any experience preparing trust accounts. You can hire a bookkeeper or an accountant to assist you in the set up of your Committeeeship record keeping, and also to maintain these on an ongoing basis for you if you like. The reasonable costs of a

bookkeeper or accountant can be paid out of the account of the person whose affairs you manage.

A journal is the best way to keep track of all cash transactions. The Record-keeping Example in Chapter 8 includes pages from a sample journal as well as tips on journal preparation.

If you have a computer, you may find it helpful in your record keeping. For example, setting up a journal using spreadsheet software – and for doing electronic banking. The reasonable cost of relevant computer software is payable from the estate, as may be the purchase of a basic, standard model computer if it will assist you in your role as Committee. If you wish to purchase a computer, you should speak with your Committee Review Officer to confirm this would be a reasonable expense given the client’s estate size, etc.

### **Committee’s “To-Do” List**

The “To-Do” list gives an overview of the tasks you must complete.

#### **Setting up your records**

- Consider contacting a bookkeeper or accountant for assistance
- Set up cash transaction journal
- Obtain copies of all documents filed with the court
- Obtain copy of Court Order
- Establish a filing system using binders or file folders

#### **Identification and survey of assets and liabilities**

- Bank accounts, investments, securities
- Vehicles/Real estate
- Personal effects/Jewelry
- Decide whether to maintain or dispose of assets
- Pay debts
- Identify all sources of income
- Ensure medical/insurance premiums paid
- Set up a budget
- Develop a written investment plan/strategy (see Chapter 5)

#### **Identify legal issues**

- Locate Will
- Identify any interests in estates and trusts
- Check that income tax reportings are up to date
- Other -criminal and civil

#### **Ongoing Management of Estate**

- Take care of legal, business and family matters, i.e. make investments, prepare tax returns, etc.
- Ensure adequacy of care
- Present accounts to the Public Guardian at times directed by Public Guardian and Trustee (action date – refer to correspondence received from our office)

**Wind-up of Committeeship (on transfer of committeeship at death or capability)**

- Notify relatives and Public Guardian and Trustee
- In case of death, notify Executor or lawyer, facilitate funeral arrangements with Executor and/or family members
- Do not prepare or submit accounts unless directed by the Public Guardian and Trustee
- Manage the estate until you can transfer assets to:
  - the person for whom you were Committee, if declared capable by the Court
  - the new Committee, upon receipt of the new Court Order
  - the Executor or Administrator of the estate

**Committee of Person Items**

- Contact adult's doctor regarding scheduled visits
- Assess and address any safety concerns regarding adult's living situation
- Contact any social service agencies that may be providing services
- Review adult's care plan if they are in care
- Attend case conferences

# Affidavit for Accounts Passing

For the Committeeship of the estate of

Last name, First Initial

I/We

Committee's Name

Committee's Address

In the City of

in the Province of British Columbia, swear that:

- I was/we were appointed Committee(s) on

Date

by Order of Judge

- the Accounts attached to this affidavit, list all the financial transactions during this period.

To

- This accounting is a true and accurate representation of my/our administration and all financial transactions during the period. I make this declaration believing it to be true and knowing it to have the same force and effect as if made under oath and by virtue of the *Evidence Act*. *It is a serious offence to make a false declaration.*

Commissioner for Taking Affidavits in and for British Columbia, or a Notary Public in and for British Columbia

**Committee's Signature**

Date: \_\_\_\_\_

## Chapter 4 - PREPARING YOUR ACCOUNTS

As Committee, you must present your accounts to the Public Guardian and Trustee for approval at intervals set by our office. These intervals will be referred to in correspondence you will receive from our office. Your first reporting period will usually be for one year after your appointment.

For example, if you were appointed on November 1, 2003, your first reporting period will begin on that day and typically end a specific number of years after that, as directed by our office in correspondence to you. These will usually vary between one and five years in length.

### **Record Keeping Example**

Chapter 8 of this Handbook has a record keeping example. It shows how accounts are prepared and maintained in a typical Committeeship.

### **Submitting Your Accounts**

You must use standard forms, provided by the Public Guardian and Trustee, to present your accounts. These forms are called the Summary of Accounts. These forms are provided to you at the start of your Committeeship and each time we pass your accounts. If you require the Summary of Accounts forms, you can print them from our website at [www.trustee.bc.ca](http://www.trustee.bc.ca), or phone us and we will mail them to you.

### **The Summary of Accounts**

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

### **Statutory Declaration**

If the person for whom you are Committee has a very limited income, you may be able to file by Statutory Declaration form instead of completing a full set of schedules and forms. Social assistance (handicapped pension) or Old Age Pension plus the supplement are the level of income that would allow you to file by Statutory Declaration. The Declaration form and guidelines for completion are included in the Summary of Accounts package.

### **Other Required Documents**

When you present your Summary of Accounts, the Public Guardian and Trustee will require you to provide photocopies (do not send originals) of other information and documents before your accounts can be approved.

Some examples are:

- copies of any new Court Orders relating to your Committee'ship;
- documents supporting any real estate transactions;
- formal appraisal reports;
- copies of legal or accounting bills;
- information to support your investment in various types of securities;
- confirmation of bank balances;
- copies of invoices or receipts for large purchases.

Don't forget to sign the Affidavit (or in minimum income situations, the Statutory Declaration) before a notary public, lawyer, or Commissioner for Taking Affidavits. You must also include our account review fee as outlined in your package, when applicable. *If your accounts are not submitted in the acceptable format, they will be returned to you for proper completion.*

### **Certificate of Approval**

When the Public Guardian and Trustee has examined and approved (or "passed") your accounts, you will receive a certificate indicating that all is in order. The certificate will also state the fee (remuneration) to be paid for your services, if you have requested it.

If we are unable to pass your accounts, then we may refer you to the Court for a "Registrar's Passing".

### **Your Fee (Remuneration)**

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

### **How We Calculate Your Fee**

The fee is based on 5% of income, plus a set fee for asset management. If you have done additional work that is out of the ordinary, please provide details in writing when submitting your Summary of Accounts.

The fees that are set for Committees are mainly for financial administration and managing the assets.

### **Your Income Tax**

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

## Chapter 5 - YOUR INVESTMENT DECISIONS

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

### Prudent Investor Requirement

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

The definition of the prudent investor has generally evolved to mean:

- Make investments necessary that a prudent investor would to protect capital and provide income.
- Risk and return objectives must be reasonable and suitable.
- Provide reasonable diversification of investments.
- Act with prudence when delegating investment authority to an agent.
- Trustee should incur only costs that are reasonable and appropriate.
- Adopt a balanced approach to managing investments.

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

### Investment Risks

There are a number of financial risks associated with investments, especially when you are managing investments for someone else. Should an investment loss occur while you are acting as Committee, you could be held personally liable for this loss. The *Trustee Act* states that you cannot be held liable for an investment loss if your conduct that led to the loss conformed to an investment plan or strategy, comprising reasonable assessments of risk and return that a prudent investor would have adopted under similar circumstances. A Committee should make every effort to maintain overall portfolio risk at a reasonable level when developing an investment plan or strategy for the person's investment. For example, the need for stable income would suggest a strategy that limits fluctuation in asset values. An adult's estate must not be exposed to unnecessary risks. A prudent investor only exposes an adult's estate to the level of risk that is associated with the investment return required to achieve the adult's financial objectives.

Critical ways to reduce risks:

- Develop an investment plan in writing
- Seek professional assistance
- Diversify when making investments
- Invest in a conservative manner
- Monitor investment performance on a regular basis.

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

### **Professional Assistance**

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

- Selecting an agent
- Establishing the terms and limits of the authority delegated
- Acquainting the agent with the investment objectives
- Monitoring the performance of the agent to ensure compliance with the terms of the delegation.

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

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

The first step in developing an investment plan is to determine the financial objectives of the person whose affairs you are managing. To do this, you need to know what you are managing. You should already have a pretty good idea of the adult's assets and liabilities. Using this information you can create a net worth statement (total assets minus liabilities equals net worth) which will help you identify what assets should be invested. Next, you should prepare a budget outlining the adult's current income and expenses to determine if there is positive cash flow (estate value is growing) or negative cash flow (estate value is getting smaller). It is always good practice to establish a budget as it provides a financial road map that you can follow during the Committeeship.

Once you have an understanding of current income and expenses, you should try to identify any significant costs that may be incurred in the future. Common examples include additional medical costs, caregiver/companion costs, travel costs, acquiring a specialized vehicle, renovations, or the purchase of a residence - usually for a younger adult. Other factors to consider include income tax implications, time horizon, the adult's risk tolerance, and any previous investment preferences. After considering these items, you should have an understanding of the person's financial objectives.

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

After you have identified the person's financial objectives, the next step is to determine the investment income required to meet these objectives and then develop an investment plan/strategy to achieve these goals. Key considerations that should be incorporated into any investment plan are current economic conditions, current market conditions, diversification, liquidity of the investments (easily convertible into cash), and reasonableness of the investment plan. It is strongly recommended that you seek professional assistance from a qualified investment adviser to assist with the development of an investment strategy.

### **Investment Options**

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

#### Debt Securities:

- Guaranteed Investment Certificates (GICs)
- Treasury Bills (T-bills)
- Savings Bonds
- Bonds
- Debentures

#### Equity Securities:

- Common Shares
- Preferred Shares

#### Investment Funds:

- Mutual Funds
- Segregated Funds
- Closed-End Investment Funds
- Labour Sponsored Investment Funds

### **Insured Deposits**

We strongly recommend that you deposit funds only with banks, credit unions and other financial institutions who are members of the Canada Deposit Insurance Corporation (CDIC), or the Credit Union Deposit Insurance Corporation (CUDIC). Deposits in member institutions are automatically insured against loss, up to certain limits. The insurance limit for banks and credit unions is \$100,000. You may want to keep the amount on deposit with any institution under that limit.

**Personal Loans**

Extending personal loans to yourself or related individuals is considered an inappropriate investment because it is a direct conflict of interest. When appointed by the Court, Committees are placed in a position of trust to manage someone else's affairs and they cannot benefit in any way from the funds they are responsible for managing. As well, Committees are accountable for the decisions they make and should make every effort to minimize the risk of investment loss when managing an adult's affairs.

**Real Estate**

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

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

**Gold, Art, Other Investments**

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

**Investor Education Kit**

We recommend that you contact the British Columbia Securities Commission for their Investor Education Kit. While this information is written to assist an individual with managing their own investments, you can use this in your role as Committee. Some of the brochures included are:

- Getting Started
- Investment Planning Worksheet
- Choosing Your Financial Advisers
- Mutual Funds
- Investing and the Internet
- Characteristics of Various Types of Securities (poster)

**Review of Investments**

When you present your accounts for review, the Public Guardian and Trustee will examine the investments you manage as Committee. You will be asked to provide a copy of your investment plan or strategy along with detailed information about the investments you are managing. Your Committee Review Officer will review this information to ensure that you are managing the adult's investments in a prudent and professional manner.

If you have invested funds in a manner that does not appear to be prudent, you may be liable for the losses incurred by the adult's estate. The Public Guardian and Trustee will be unable to pass your accounts if the investment decisions are inappropriate.

**Any Questions, Please Call**

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

## Chapter 6 - YOUR DISCRETION

In this section we will discuss issues that may arise in your day-to-day management of the client's affairs, when you must exercise your discretion, or judgment, for the benefit of the person for whom you are Committee and his or her family. It is important to think about the client's wishes when decision-making. Each situation is different and we cannot cover them all in this book. If you are unsure how to deal with a situation, you may call your Committee Review Officer for advice.

### **Act Reasonably and Prudently**

As we have already discussed, your duty is to act reasonably and prudently and in the best interest of the person whose affairs you manage. Remember to manage the individual's money with a cost-conscious approach; obtain a few prices for comparison when purchasing larger items or hiring a professional to assist you.

### **If You Are the Spouse**

If you are Committee for your husband or wife, you do not have to separate out what belongs to each of you. You will be able to continue to live as you have done, in your family home, using all of your shared household furnishings, automobiles and so on, as long as it is fiscally prudent to do so.

### **Dealing With Real Estate**

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

- What does the person wish to have done?
- Is the person likely to live in the house again? You could ask his or her doctor for a prognosis.
- Should the house be rented?
- Do other members of the family, who have legitimate claims for support, need the house to live in? Legitimate claimants are usually limited to the spouse and dependent children.
- Does the person whose affairs you manage need the cash from the sale to meet his or her expenses?
- Can he or she afford the taxes and other costs of maintaining the house?
- What are the views of the family members?
- Is the house specifically bequeathed to someone in the Will?

If you decide to rent out the home, we would expect you to do so for an amount equivalent to what we call "market rent" - a fair rent given the location and similar rentals in the neighborhood. If you want to charge less than market rent to somebody living in the home, you must discuss this with your Committee Review Officer. You should have a formal rental agreement with the tenant - you can purchase these from some stationery or bookstores or obtain one from your local BC Residential Tenancy office ([www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)). We will ask for a photocopy with your accounts submission.

If you decide to sell the home, you must get an appraisal from a qualified appraiser (not a real estate agent) and sell the property for fair market value. If you wish to sell for less than the appraised value, the property must have had reasonable market exposure.

It is important to check your Court Order to see whether you must get a further Court Order authorizing you to sell the property, for example: "This court further orders that the Committee be restricted from disposing of or encumbering the real property without further court order on notice to the Public Guardian and Trustee." If you require a further court order, then you should seek the assistance of a lawyer to prepare a court application. You may wish to request a lawyer with experience in Committee, estate or conveyancing matters.

If your Court Order states that you simply require the permission of our office to sell the property - "this Court further orders that the Committee be restricted from disposing of or encumbering the real property without the prior written consent of the Public Guardian and Trustee", then we will require certain documents from you. You will need to provide our office with a copy of the formal appraisal (not more than six months old), a copy of the contract of sale, and a letter requesting our approval that includes the name and fax number of your lawyer/notary public and real estate agent. When you write up the contract of sale, be sure to include a subject clause "subject to the approval of the Public Guardian and Trustee". You must provide our office with at least five clear working days to respond to your request for approval.

### **Automobiles**

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

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

If the person for whom you are Committee is not using these items and is likely to become capable and you know that they will want these items, you may consider storing these items if it is fiscally reasonable to do so. If specific items have been identified in a Will, you should keep this in mind when making your decisions. If you unnecessarily sell such an asset you could be challenged by the individual who is named in the Will as entitled to this asset.

Again, consult with the person and with his or her family for their views, and consider whether the proceeds of sale are needed for on-going expenses.

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

**Bank Accounts**

Inquire as to the best bank account options and immediately establish an account(s) in the name of the person whose affairs you manage if they do not already exist. (See the earlier section in this book, titled “Getting Started”.)

**Joint Accounts**

It is improper to establish a joint bank account with the person whose affairs you manage. If you are the spouse and the account was set up prior to the Committeeship you may continue to use the account as usual. Joint accounts usually carry a right of survivorship. This means that if you change the registration to make the account joint and the person for whom you are Committee dies, the entire account would go to you. As Committee, you must not put yourself in a position to benefit from the estate you are managing. This joint account would be simply for ease of managing funds for the person you represent. Where you have concerns about a joint account holder it is your responsibility to investigate that this is an appropriate arrangement.

If the account was established as a joint account prior to the Committeeship, for estate-planning purposes, then it is fine to continue to operate it as in the past. If the account had always been used solely for the adult’s benefit, then it should be continued to be used in that way. It is not appropriate to change bank accounts to joint ownership when they were not already held that way.

**Income**

All of the income of the person whose affairs you manage should be deposited to an account in his or her name as soon as it is received.

**Expenses**

You may pay all of the reasonable expenses from the adult’s account. This includes the cost of care in a hospital or other facility, homemaker’s fees, Meals on Wheels, Medical Services Plan premiums, accommodation, food, utilities, bus passes and many other items paid for the benefit of the adult.

When considering whether an expense is reasonable ask yourself: Is it necessary? Is it in the best interests of the person whose affairs you manage? Is the amount being charged within the normal range for that item or service? The intent is not only to preserve the estate but to maintain quality of life and reflect the wishes of the adult whenever possible.

If the person resides in a care facility, maintain their comfort fund account at a dollar level that provides the person with all of their needs. The facility management should be able to recommend a minimal amount for you to keep in the comfort fund, based on the individual’s specific needs. You are responsible for monitoring the use of this fund.

You may reimburse yourself for out-of-pocket expenses you have incurred on his or her behalf, if they are reasonable and you have the receipts. For example, you may reimburse yourself for gas or car mileage, stationery and record keeping supplies.

If you are providing care-giving services to the person, and you wish to receive compensation for doing so, you must obtain special approval from our office. You can do so by sending a letter to your Committee Review Officer which outlines: the specific services you are providing, your qualifications for supplying these, the number of hours (for example, per week) and the amount you wish to be paid and how the fee was determined (for example, comparable services offered elsewhere).

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

### **Pensions and Benefits**

If the person whose affairs you manage qualifies for any pensions or other benefits, you must apply on his or her behalf.

### **Income Tax**

You are responsible for filing income tax returns on behalf of the person whose affairs you manage. This includes filing any overdue returns for prior years. If there are penalties involved, you may wish to let CCRA know about the individual's incapacity because in special circumstances, they sometimes will forgive part of the penalty. You can hire a professional to prepare the income tax returns and the cost of this can be paid from the adult's account.

### **Business Affairs**

If a business forms part of the estate, you will need to exercise your discretion in the many business decisions that will have to be made. You may choose to sell the business - especially if the person whose affairs you manage was indispensable to its operation. Or, you may choose to continue operating the business and to hire help for the things you are unable to do. It is a good idea to seek an accountant's assistance with the business records, financial statements and tax preparation. You may wish to seek legal advice in certain circumstances especially if the adult is a Director of a company. If you decide to sell the business, you will want to consult a lawyer or accountant with experience dealing with sales of this type of business.

### **Interest in a Trust**

If the person whose affairs you manage has a trust, you must submit the financial statements related to the adult's interest in that trust along with your Committee accounts when they are due.

### **Legal Affairs**

As Committee, you are the proper person to bring and defend lawsuits on behalf of the person for whom you are Committee. This would include any action that should be taken as a result of a motor vehicle accident, under the *Wills Variation Act*, the *Family Relations Act*, etc. You would need to balance the costs, likelihood of success and the client wishes before pursuing any action. For example, if he or she were being sued for financial support in a divorce case, you would continue with the lawsuit on his or her behalf. Of course you must be careful not to get involved in unnecessary lawsuits. Also, if the adult is the named executor in someone's Will, the Committee can act on their behalf.

You may discover that the person whose affairs you manage has been taken advantage of. If he or she made a gift or sold something for less than its full value, to someone who knew they were dealing with an incapable person, the transaction is legally of no effect. If you are concerned that this has happened, you should probably get legal advice.

The Public Guardian and Trustee reviews all lawyers' accounts pertaining to your appointment as committee when you present your accounts.

### **Assisting the Family**

As Committee, you should consider the interests of the family.

If the person whose affairs you manage was supporting his or her spouse or another family member, you may continue to pay the costs of maintaining that dependent if:

- the person for whom you are Committee can afford it, after first covering his or her own expenses; and
- not enough other income is available to the dependent person to maintain his or her standard of living.

You should contact the Public Guardian and Trustee's office for approval before beginning such payments.

### **Maintenance For A Spouse**

If you are your spouse's Committee and you were supported by him or her before the Committeeship, you should let the Public Guardian and Trustee know that you intend to continue to use your spouse's funds for your own support.

You can have a budget approved so that you can pay for your personal expenses without the need for a detailed accounting.

### **Gifts to Family Members**

The continuing cost of small gifts to family members - the kind of gifts that have been part of a family tradition (for example, birthdays) - may be paid from the account of the person whose affairs you manage. Of course, this is dependent on whether or not the person whose affairs you manage can afford it, and whether you feel they would have continued the tradition. If you want to gift more than \$2,500.00 per year on average, then you need to get approval from your Committee Review Officer, unless your Court Order allows for this.

You should get Court approval before giving substantial gifts or charitable donations on his or her behalf. If the level of gifts is determined to be unreasonable, then this may cause difficulties when we review your accounts - for example we may have to refer you to the Court to have them review your accounts.

**Conflict of Interest**

Whenever your own personal interests conflict with the best interests of the person for whom you are Committee, you will need approval from the Public Guardian and Trustee, or even from the Court, before acting. For example, if you are Committee for your brother and you are contesting your mother's Will, the law sees your brother and you as competing for as big a share as possible of the estate. In a case like that, you have a conflict of interest, since your claim on the estate conflicts with your brother's. Consequently, you will need to get prior approval before taking any action. In that case, you might have to step down temporarily as Committee.

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

Always feel free to check with your Committee Review Officer if you are unsure of a situation.

**Hiring Professional Help**

It is your responsibility to manage the financial affairs of the person for whom you are Committee, but there may be aspects that are too complex for you to handle. In some cases it will be appropriate to hire a professional and to pay for these services from the person's funds. For example, you may pay an accountant to prepare income tax returns or to prepare your accounts for approval, or hire a bookkeeper to help with your monthly record keeping. If the person whose affairs you manage owns a large security portfolio, or an interest in a business, it may be appropriate to hire an investment/business advisor to provide you with professional assistance.

Remember, when purchasing professional services, to ensure that the prices you are paying are reasonable for the services provided. If the Public Guardian and Trustee determines that the cost of services contracted was unreasonable, or that the service is one that a Committee would reasonably be expected to provide, then you can be held liable for the cost, or it may be reduced from any remuneration to which you are entitled.

It is not expected or required that you undertake the expense of having your accounts "audited" by an accountant, as they will be reviewed by this Office.

**Writing a Will**

Even though the person whose affairs you manage has been "declared incapable of managing their affairs" it is possible they could execute a legal Will. The level of capacity for writing a Will - called "testamentary capacity" - is different from that required under the *Patients Property Act* to declare someone incapable of managing their affairs. To determine whether the individual has testamentary capacity, speak with their doctor, and have the doctor put his/her opinion in writing. Then, if the adult wants to execute a Will, approach a lawyer and see if the lawyer is in agreement. The desire to make the Will, and its contents, must come from the adult and not from the Committee.

**Marriage**

If the adult whose affairs you manage wishes to get married, it may be important, if there are concerns, to obtain advice from both his/her doctor and a lawyer to see if he/she is capable of entering into such an agreement. The doctor will assess whether the individual understands the meaning of a marriage agreement, and the lawyer will provide the necessary legal advice. Not every situation will require a full assessment for this purpose.

## Chapter 7 - COMMITTEE OF PERSON

The *Patients Property Act* is the legislation that allows for someone to be appointed Committee of Person for an adult. Over the years, the Courts have handed down a number of decisions that help provide clarity regarding the role and duties of a Committee of Person. In addition, there are a number of pieces of legislation related to personal decision-making on behalf of an incapable adult. These acts can be used as a guide when making proper and prudent decisions, especially the *Health Care (Consent) and Care Facility (Admission) Act*. The information below is based on our knowledge of legal precedents and modern legislation related to substitute decision-making for incapable adults.

The role of a Committee of Person involves making decisions regarding an adult's personal care, where they are to reside, health care decisions, and who has access to visit with the adult. When a Committee of Person needs to make a decision, they should consult, to the greatest extent possible, with the adult to determine his or her current wishes and with other immediate members of the adult's family. In general, a Committee of Person should only consider making the decisions that the adult is not capable of making for themselves. In having the legal authority to make decisions regarding very personal matters, it is extremely important that a Committee of Person make such decisions based on the adult's wishes, beliefs, and in their best interests.

### Health Care Decisions

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

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

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

Given the similarity in responsibilities between TSDM's and Committees, it is suggested that Committees use the provisions of the *Health Care (Consent) and Care Facility (Admission) Act* as a guide when making health care decisions.

During your appointment as Committee of Person you could be asked to make a number of health care decisions. The majority will likely be for minor treatments such as medications and routine medical procedures. However, you may be asked to make a major health care decision for the person for whom you are Committee and these decisions could have very serious implications.

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

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

### **Restricted & Prohibited Treatments**

Under the *Health Care (Consent) and Care Facility (Admission) Act* there are some types of health care that Temporary Substitute Decision Makers are restricted from making, requiring a specialized consent procedure, and others that are prohibited. If you are faced with any of these decisions you may want to go to Court for approval. These treatments are:

#### Restricted Treatments:

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

If the above process has been completed then you may consent to the health care requests. If a physician is recommending either an abortion or electroconvulsive therapy, the physician has a duty to inform the Community Legal Assistance Society about the proposed treatment. The Community Legal Assistance Society has a role to advocate on behalf of vulnerable adults.

#### Prohibited Treatments:

- Psychosurgery.
- Tissue donation to another individual or for research purposes.
- Experimental health care involving foreseeable risk to the adult that does not outweigh the benefits.
- Participation in a medical research program that has not been approved by an appropriate ethics Committee.
- Any treatment, procedure or therapy that involves using aversive stimuli to induce a change in behaviour.

### Non-therapeutic Sterilizations:

This is a prohibited treatment because it is not deemed to be therapeutic and is therefore outside the ambit of the Health Care (Consent) and Care Facility (Admission) Act.

In 1986, in the *Re Eve* case, the Supreme Court of Canada was asked to rule on whether a Committee or the Court could give a legally valid consent for a non-medically necessary sterilization. The Supreme Court of Canada decided that non-therapeutic sterilizations could never be a decision for the benefit of a person who is incapable of consenting themselves. This means that under the current law in Canada, nobody can give consent on someone else's behalf to a sterilization that is not medically necessary (not a parent, Committee, doctor or hospital).

### **Residential and Facility Admission Decisions**

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

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

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

### **Access Decisions**

Committees of Person have a duty to ensure well being by balancing personal safety and security with emotional support and contact with supportive family and friends. A Committee of Person may have to exercise this particular aspect of their legal authority. Having the adult determine who they wish to visit is usually the best practice and visits from family and friends are usually an appreciated event.

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

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

- The wishes of the person for whom you are Committee
- The best interest of this person
- Alternative arrangements that may provide a safe environment for an individual to visit the adult
- Advice of the adult's doctor and care providers
- Level of risk or harm that the adult may be subjected to

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

The Public Guardian and Trustee's office may receive calls or letters from individuals alleging that a Committee is abusing their authority by restricting their access to an adult. Our office has an obligation to investigate allegations of inappropriate conduct by a Committee. When conducting our investigation, we will request that a Committee provide us with information regarding the need to restrict someone's access to the adult. When our office has had an opportunity to gather and review the relevant information, we may conclude our investigation by taking no further action, offering suggestions to resolve the situation, or when necessary, taking legal steps to resolve the matter.

### **If You Have Questions**

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

## Chapter 8 - RECORD KEEPING EXAMPLE

### How To Set Up Your Journal

This section helps you set up and maintain your Committeeship records. It also tells you how to prepare the Summary of Accounts that you will submit to the Public Guardian and Trustee.

Often, Committees do not have any experience maintaining accounting records. Some Committees find this particular aspect of their role to be overwhelming and frustrating. If this situation applies to you, we strongly recommend that you seek professional assistance with the set up of the Committeeship accounts, the maintaining of the records, or the preparation of the Summary of Accounts forms, or all three. The reasonable costs of this service can be paid from the adult's account.

In this example, we will show you a sample of the accounts of a typical Committeeship. We have used the kinds of income and expenses that many people have. The example is long so that we can cover a number of different situations. You may find it useful as a reference. We may not have included everything you need to deal with, but we hope to give you a good idea of what to do. If you do not understand it or need help with something that is not covered in it, please call your Committee Review Officer.

In the sample, "x" covers only six months, from June 1 to November 30, 2003. Normally, you will be preparing your accounts for a longer period, as directed by the Public Guardian and Trustee.

To get a better understanding of some of the accounting terms used here, see the section titled "Definition of Terms".

### The Example

John Doe was appointed Committee for his sister, Ms. Mary Smith, on May 31, 2003. At the time of his appointment, Ms. Smith had been living at the Saanich Rest Home, a care facility, for a year, and she continued to live there for the whole reporting period. Every other weekend, John picked Mary up from the Rest Home and took her to her house for a visit. According to the Affidavit of Kindred and Fortune John filed in his application for Committeeship, Mary Smith's assets and liabilities on April 30, 2003 were as follows:

#### Assets

- Bank accounts: Balance - \$12,550
- Term deposit of \$150,000
- Canada Savings Bonds regular series totaling \$12,000
- Stocks:
  - a) ABC Ltd. 1,000 shares purchased in 1984, valued at \$3.375 per share for a total of \$3,375
  - b) XYZ Ltd. 10,000 shares valued at \$0.75 per share or \$7,500 total.
- Automobile: estimated value \$2,000
- House: assessed value \$ 150,000
- Furniture and personal effects: estimated value \$5,000

**Liabilities**

- Mortgage on the house:
- Balance of \$50,000, outstanding, at 8% interest, due 2004.

**Income and Expenses**

Mary's income comes from Old Age Pension, Canada Pension, dividend income and interest income. Mary's income and expenses for the period from June 1 to November 30, 2003 were:

1. Paid to the care facility, Saanich Rest Home, \$850 each month. This amount includes a \$100 comfort payment.
2. Paid mortgage payments of \$350 each month.
3. Paid annual premiums of \$460 on the bond that John was required to post according to the Court Order appointing him as Committee.
4. Received Old Age Pension of \$400 and Canada Pension of \$340 each month.
5. Paid repair costs of \$160 for a window broken in Mary's house in June 2003.
6. Received dividends from ABC Ltd. Payable quarterly at 0.02 per share or \$20 per quarter (payable in the months of March, June, September, and December).
7. Received interest of 2% per year, paid monthly, from bank accounts at each month end. This amount is recorded in Mary's passbook.
8. Paid bank service charge of \$8 per month. This amount is also recorded in Mary's bank passbook.
9. Paid B.C. Hydro each month.
10. Paid Telus each month.
11. Paid property tax of \$1,300 due July 2003.
12. One-year term deposit of \$150,000 matured on August 15, 2003. The face value of \$150,000 plus one year's interest of \$9,000 totaling \$159,000 was deposited into the bank account.
13. The \$150,000 principal from transaction #12 was renewed for another one-year term, to mature on August 15, 2004.
14. Received \$3,000 in Canada Savings Bond (CSB) proceeds from a bond which matured on October 31, 2003, plus interest of \$150 for the year. The total deposit November 1, 2003 was \$3,150.
15. Paid \$3,000 for new CSB's using the proceeds from the matured CSB in transaction #14.
16. Received \$450 interest on the remaining CSB's.
17. Received \$1,200 from John's sale of Mary's car. November 2003, he sold the car for its fair market value. The car was listed on the Affidavit of Kindred and Fortune at \$2,000.
18. Received \$4,000 from the sale of 1000 shares of ABC Ltd. in November 2003. The shares were listed on the Affidavit of Kindred and Fortune at \$3,375.

We have entered all these transactions, or financial events, on the ledger sheets at the end of this section. You will probably find it helpful to refer to the ledger sheets as you read the method of recording these transactions (Example "A"). We have used the transaction number to show where each one has been recorded. The regular payments and receipts are entered each month. You do not need to number the transactions in your journal.

We have labelled the tops of the columns with headings for the most frequent items. We have also included an "Other" column for both income and expenses to record items that don't fit in the usual columns.

We have allowed two columns for the bank account, one to record deposits and payments, and one to calculate the balance. Payments are entered in brackets ( ), so that you can distinguish them from deposits.

The month is written at the beginning of the list of transactions.

**Item #1**

The first item, the payment to the care facility, is recorded on line one. It is entered in two places, once to show where the money came from (the bank account) and once to show where it went (the care facility). It is entered in the Bank Account column in brackets to show it is a payment, and in the Care Facility column.

**Item #2**

The second item is the mortgage payment. It is entered in the Bank Account column and the Mortgage Payment column. It is recorded as a single amount without separating the interest and principal portions of the payment.

**Item #3**

The third item is the bond premium. It is entered in the Bank Account column and the General Expenses - Other column. Because the column doesn't show exactly what the payment is, there is a brief note in the Explanation column to show what the payment is. Other payments, items 5, 8-10 are entered in the same way for the rest of the month.

**Item #4**

The fourth item listed is an income item. Again, it is entered twice, once to show where it came from Canada Pension Plan (CPP) and once to show where it went (the bank). It is entered in the Bank Account column without brackets and in the CPP column.

Other income items, for example the dividends (item #6) and bank interest (item #7), are recorded in the same way. They are entered first in the Bank Account column and then in the appropriate Income Receipt column.

**Regular Income and Expense Items**

The income and expenses that are constant from month to month, such as the care facility payments and the CPP receipts, are recorded in the same way each month for the whole period.

**Some Items Receive A Special Treatment**

Item #12 is a term deposit. The cash received, \$159,000, is entered in the Bank Account column. The interest and face value of the term deposit are separated for entry in the Income columns. The \$9,000 interest is entered in the Interest column and the \$150,000 that was originally paid for the term deposit is entered in the Capital Receipt column.

Other income of this kind (Items #14,15,16) is recorded in the same way.

The sale of the car (Item #17) and the stocks (Item #18) are entered as deposits to the Bank Account column and in the Capital Receipts column. It is not necessary for you to calculate gains or losses.

The purchase of a new term deposit (Item #13) is recorded in the Bank Account column as a payment and in the Capital Expenses – “Other” column.

**“Income” and “Capital”**

You may have noticed that we separate “income” and “capital”. Pensions, interest, dividends and compensation payments are examples of income. Capital receipts come in when you cash in some other part of the estate. For example, the proceeds from the sale of a house or the original amount you invested in a term deposit are capital receipts.

This completes the information in our example. You may want to refer to it later as you are doing your own books and records.

**Getting Started**

You can start by assembling the things you will need to keep your records. You will need:

- a ledger book, which is a record keeping book with columns. You can buy these at any stationery store with as many columns as you need. For most estates, a 12 to 15 column book will be enough. If you have a computer, you may wish to set up your record keeping using a spreadsheet or accounting software. If you are hiring a bookkeeper or accountant to assist you in setting up and/or maintaining the records it will be useful to provide them with the information below.
- bank statements, brokerage statements, and any other papers, such as bills, that provide you with information about the transactions for the person whose affairs you manage.
- a copy of your Affidavit of Kindred and Fortune or a list of the bank accounts, property, term deposits, etc. that the person owned at the beginning of the Committeeship.

### Setting Up Your Ledger Columns

When you look over the information you have about the income and expenses, you will find that there are a number of regular income and expense items. For example, there may be pension income monthly; there will often be regular interest payments, etc. The regular expenses might include living expenses, home maintenance expenses, or personal care. You may also want to look at the Summary of Accounts forms for the kinds of income and payments we will be asking you to separate for passing your accounts. These groups will be the labels for your columns. You will need an "Other" column and a "Capital" column for both income and expenses. Each Bank Account should have two columns, one for the balance and one for the transactions.

### Using Your Ledger

At the top of the Bank Account Balance column(s), enter the bank balance(s) at the date of your Court Order.

Starting with the date of your Court Order, enter the month and then all the transactions as they occur. Use the example as a guide. Remember that every transaction should have at least two entries, one to show where the money came from and one to show where it went. If the entry is a payment (as opposed to receipt), it should be in brackets. Be sure that all payments are entered in brackets in the Bank Account column, as otherwise the totals will be incorrect.

You do not need to enter the transactions in date order, but it is helpful to have them sorted by month. You should show both what was bought and who was paid.

The purpose of the ledger is to explain all the changes to the bank account and assets over the period you are reporting on. Every amount on the bank statement or passbook should be entered with an explanation. A year from now, you may not remember that the \$124.32 was a refund from the comfort fund.

### Balancing Your Ledger

Every month, you should check your Bank Account column in the ledger against the bank books and statements to be sure that everything has been entered properly. Your new bank balance is calculated by adding all of the deposits (no brackets) and subtracting all of the payments (in brackets) from the original balance.

Each month, you should also total all of the columns in your ledger, and check that:

$$\text{Bank Account(s) [deposits minus payments]} = \\ \text{Total income columns} - \text{total expense columns}$$

If your new balance in the Bank Account Balance column is not the same as the balance on the bank statement or passbook, you will need to do a bank reconciliation. It is done as follows:

Start:	Bank balance in your statement or passbook at the end of the month.
Add:	Deposits recorded in your journal that are not on the statement or passbook yet.
Subtract:	Cheques you have written that are not on the statement yet.
Equals:	Balance in your ledger "Bank Account" column.

This may sound quite complicated, but if you do it step by step a month at a time, it will not be as difficult as it looks at first. If you have any questions about how to set up your accounts or want to speak to someone, please call your Committee Review Officer. Keeping up your records on an on-going basis will simplify your accounts.

### Summary of Accounts

You will be required to complete a Summary of Accounts package at the end of each accounting period. We have used the same typical Committeeship to prepare a sample Summary of Accounts. You will find it useful to refer to the example as we go through it. Again, the accounting period covered in the example is only six months. Yours will cover a longer period.

### Example

This is John's first presentation of accounts. John completes the Cover Page, Checklist and Current Information Report and assembles all of the documents he needs. He then completes the schedules he needs, as indicated by the Checklist. The schedules he will complete are: Schedule A-1 Term Deposits, Government Bonds, GICs; Schedule A-3 Stocks; B-1 Real Estate; Schedule Household/Personal Effects; and Schedule D Mortgages. Once the schedules are done, he will complete Form #8: Bank Account Report.

John can then transfer the information from all the Forms and Schedules to Forms #5, 6, & 7, adding any additional information necessary to complete them. When he has finished, he will complete Form #4: Affidavit and sign it before a Notary Public or Commissioner for taking Affidavits. The staff of the Public Guardian and Trustee's office cannot sign these documents when they are presented in person.

### Schedules

Before beginning the schedules, the Capital Receipts in the ledger are broken down into the sale of different types of items, such as the bonds, stocks and the car.

### Schedule A -1

On Schedule A-1, Term Deposits, Government Bonds, and GIC's, Mary's \$150,000 term deposit and \$12,000 Canada Savings Bonds listed in the Affidavit of Kindred and Fortune are entered on the left hand side, with their value listed in the Holdings - Start of Period column. The amounts she paid for the new ones purchased (Transaction #13 and 15) are listed in the Purchase Cost column. Their serial numbers, face value and the date they were bought are all entered in the columns. The proceeds of the matured Canada Savings Bonds (Transaction #14, \$3,000) and term deposit (Transaction #12, \$150,000) are entered in the Proceeds column.

The values of the term deposit and Canada Savings Bonds Mary has at the end of the period are entered in the Holdings - End of Period column, and these are the holdings that John will use at the start of the next period. This total should be the same as the total John shows on Line 2 of the Assets and Liabilities Report (see sample). All of the interest earned on the term deposits and bonds is entered in the final column. The total of this interest is the total out of the interest column that is entered as on Line 102 of the Cash In Report (Form #6).

**Schedule A -3**

On Schedule A - 3 Stocks, the Company name, number of shares, class of shares (common, preferred, convertible, etc.), their purchase price or amount from the Affidavit of Kindred and Fortune and the date of their purchase are listed. John sold them November 15, 2003. The date and proceeds of the sale are entered. The amount of the dividends received is also entered. The total dividends on this schedule should be equal to the amount you have listed in your ledger as received, and the amount listed on Line 4 of the Assets and Liabilities Report (Form #5).

**Schedules B - 1, C and D**

Mary's house has been entered on Schedule B-1, her Household/Personal Effects on Schedule C, and the outstanding mortgage at the end of the period on Schedule D. These amounts are transferred to the appropriate lines on Form #5.

**Forms****Form #8: Bank Account Report**

John has only one bank account to enter on the Bank Account Report (not shown). The total of all of the bank accounts on this report should equal the totals of the ledger income and expense columns.

**Form #5: Assets and Liabilities****"Opening Balance" Column**

The amounts listed in the "Opening Balance" column for Assets and Liabilities are taken from the Affidavit of Kindred and Fortune that John filed, and include any changes reported on the Confirmation of Assets form.

**"Ending Balance" Column**

John uses the amounts from his Bank Account Report and the schedules he has completed from the Summary of Accounts (i.e. A - 1, A - 3, B - 1, C and D).

**Form #6: Cash In Report****Current Period Column**

John will need to separate the total interest recorded in the interest column into:

- a) Bank Account Interest; and
- b) Term Deposit, Bond and GIC Interest. This interest is entered from Schedule A-1.

OAS and CPP are entered by totaling all the monthly payments in their ledger columns. The number of times each type of income is received on a regular basis is entered.

He will transfer the proceed amounts from the sale of Mary's term deposits, savings bonds, stocks and vehicle that he has entered on Schedules A-1, A-3 and C to the appropriate lines.

**Form #7: Cash Out Report****Current Period Column**

The total of all the months' care facility and utility payments are entered in the appropriate lines. The "Other" column amounts are separated and entered on the appropriate lines. The Capital Expenses, that is, the purchase of a new term deposit and the Savings Bonds, are entered from Schedule A-1.

**General Guide for Forms**

The General Guide that accompanies the Summary of Accounts gives detailed instructions for completing the forms and schedules. You may find it useful to look at the example along with the General Guide.

**CASH TRANSACTION JOURNAL - MARY SMITH, COMMITTEESHIP**

**PERIOD: JUNE 1, 2003 TO NOVEMBER 30, 2003**

TRANSACTION ITEM #	DATE	DESCRIPTION	CHEQUE #	BANK A/C BALANCE	BANK A/C DEPOSIT (PAYMENT)	INCOME RECEIPTS				EXPENSES			CAPITAL RECEIPTS	CAPITAL EXPENSES		EXPLANATION
						OAS	CPP	INTEREST	DIVIDEND	CARE FACILITY	UTILITIES	OTHER		MORTGAGE	OTHER	
1	Jun-03	<b>BEGINNING BANK BALANCE</b>		<b>12,550</b>												BANK BALANCE IN AFFIDAVIT OF KINDRED & FORTUNE
1	1	SAANICH REST HOME	101		(850)					850						
2	2	BANK OF VICTORIA	102		(350)									350		
3	3	INSURANCE CO.	103		(460)											BOND PREMIUM
4	10	CPP			340		340									
4	10	OAS			400	400										
5	15	GLASS CO.	104		(160)											REPAIR OF WINDOW
6	15	ABC LTD.			20				20							
7	30	BANK INTEREST			20			20								QUARTERLY DIVIDEND
8	30	BANK S/C			(8)											
9	30	B.C. HYDRO	105		(75)									75		
10	30	TELUS	106		(35)									35		
				<b>11,392</b>	<b>(1,158)</b>	<b>400</b>	<b>340</b>	<b>20</b>	<b>20</b>	<b>850</b>	<b>110</b>	<b>628</b>	<b>0</b>	<b>350</b>	<b>0</b>	
	Jul-03															
1	1	SAANICH REST HOME	107		(850)					850						
11	2	CITY OF VICTORIA	108		(1,300)											PROPERTY TAX
2	2	BANK OF VICTORIA	109		(350)									350		
4	10	CPP			340		340									
4	10	OAS			400	400										
		<b>TOTAL FORWARD</b>		<b>9,632</b>	<b>(2,918)</b>	<b>800</b>	<b>680</b>	<b>20</b>	<b>20</b>	<b>1,700</b>	<b>110</b>	<b>1,928</b>	<b>0</b>	<b>700</b>	<b>0</b>	

**EXAMPLE "A"**

**CASH TRANSACTION JOURNAL - MARY SMITH, COMMITTEESHIP**

**PERIOD: JUNE 1, 2003 TO NOVEMBER 30, 2003**

TRANSACTION ITEM #	DATE	DESCRIPTION	CHEQUE #	BANK A/C BALANCE	BANK A/C DEPOSIT (PAYMENT)	INCOME RECEIPTS				EXPENSES			CAPITAL RECEIPTS	CAPITAL EXPENSES		EXPLANATION
						OAS	CPP	INTEREST	DIVIDEND	CARE FACILITY	UTILITIES	OTHER		MORTGAGE	OTHER	
	Jul-03	BALANCE FORWARD		9,632	(2,918)	800	680	20	20	1,700	110	1,928	0	700	0	
9	25	BC HYDRO	110		(72)						72					
10	28	TELUS	111		(33)						33					
7	30	BANK INTEREST			16			16								
8	31	SERVICE CHARGE			(8)							8				
				9,535	(3,015)	800	680	36	20	1,700	215	1,936	0	700	0	
	Aug-03															
1	1	SAANICH RESTHOME	112		(850)					850						
2	1	BANK OF VICTORIA	113		(350)									350		
4	8	CPP / OAS			740	400	340									
12	15	TERM DEPOSIT			159,000			9,000					150,000			TERM DEPOSIT MATURED
13	15	TERM DEPOSIT			(150,000)										150,000	TERM DEPOSIT RENEWED
9	25	BC HYDRO	114		(65)						65					
10	26	TELUS	115		(30)						30					
7	31	BANK INTEREST			30			30								
8	31	SERVICE CHARGE			(8)							8				
		TOTAL FORWARD		18,002	5,452	1,200	1,020	9,066	20	2,550	310	1,944	150,000	1,050	150,000	

**EXAMPLE "A"**

**CASH TRANSACTION JOURNAL - MARY SMITH, COMMITTEESHIP**

**PERIOD: JUNE 1, 2003 TO NOVEMBER 30, 2003**

TRANS- ACTION ITEM #	DATE	DESCRIPTION	CHEQUE #	BANK A/C BALANCE	BANK A/C DEPOSIT (PAYMENT)	INCOME RECEIPTS				EXPENSES			CAPITAL RECEIPTS	CAPITAL EXPENSES		EXPLANATION
						OAS	CPP	INTEREST	DIVIDEND	CARE FACILITY	UTILITIES	OTHER		MORTGAGE	OTHER	
		BALANCE FORWARD		<b>18,002</b>	<b>5,452</b>	<b>1,200</b>	<b>1,020</b>	<b>9,066</b>	<b>20</b>	<b>2,550</b>	<b>310</b>	<b>1,944</b>	<b>150,000</b>	<b>1,050</b>	<b>150,000</b>	
	Sep-03															
1	1	SAANICH REST HOME	116		(850)					850						
2	1	BANK OFVICTORIA	117		(350)									350		
4	10	OAS / CPP			740	400	340									
6	215	ABC LTD.	20		20				20							
9	20	BC HYDRO	118		(75)						75					
10	20	TELUS	119		(33)						33					
7	30	BANK INTEREST			30			30								
8	30	SERVICE CHARGE			(8)							8				
				<b>17,476</b>	<b>4,926</b>	<b>1,600</b>	<b>1,360</b>	<b>9,096</b>	<b>40</b>	<b>3,400</b>	<b>418</b>	<b>1,952</b>	<b>150,000</b>	<b>1,400</b>	<b>150,000</b>	
	Oct-03															
1	1	SAANICH RETHOME	120		(850)					850						
2	1	BANK OFVICTORIA	121		(350)									350		
4	10	CPP / OAS			740	400	340									
9	23	BC HYDRO	122		(70)						70					
10	24	TELUS	123		(30)						30					
7	31	BANK INTEREST			30			30								
8	31	SERVICE CHARGE			(8)							8				
		<b>TOTAL FORWARD</b>		<b>16,938</b>	<b>4,388</b>	<b>2,000</b>	<b>1,700</b>	<b>9,126</b>	<b>40</b>	<b>4,250</b>	<b>518</b>	<b>1,960</b>	<b>150,000</b>	<b>1,750</b>	<b>150,000</b>	

**EXAMPLE "A"**

**CASH TRANSACTION JOURNAL -MARY SMITH, COMMITTEESHIP**

**PERIOD: JUNE 1, 2003 TO NOVEMBER 30, 2003**

TRANS- ACTION ITEM #	DATE	DESCRIPTION	CHEQUE #	BANK A/C BALANCE	BANK A/C DEPOSIT (PAYMENT)	INCOME RECEIPTS				EXPENSES			CAPITAL RECEIPTS	CAPITAL EXPENSES		EXPLANATION
						OAS	CPP	INTEREST	DIVIDEND	CARE FACILITY	UTILITIES	OTHER		MORTGAGE	OTHER	
		BALANCE FORWARD		<b>16,938</b>	<b>4,388</b>	<b>2,000</b>	<b>1,700</b>	<b>9,126</b>	<b>40</b>	<b>4,250</b>	<b>518</b>	<b>1,960</b>	<b>150,000</b>	<b>1,750</b>	<b>150,000</b>	
	Nov-03															
14	1	CSB - MATURED			3,150			150					3,000			
15	1	CSB - PURCHASE	124		(3,000)											CSB PURCHASE
16	1	CSB - INTEREST			450			450								
1	1	SAANICH RESTHOME	125		(850)					850						
2	1	BANK OFVICTORIA	126		(350)									350		
4	10	CPP / OAS			740	400	340									
17	12	SELL CAR			1,200								1,200			AKF VALUE \$2,000
18	15	SELL ABC SHARES			4,000								4,000			AKF VALUE \$3,375
9	25	BC HYDRO	127		(78)						78					
10	25	TELUS	128		(31)						31					
7	30	BANK INTEREST			28			28								
8	30	SERVICE CHARGE			(8)							8				
		<b>TOTAL FORWARD</b>		<b>22,189</b>	<b>9,639</b>	<b>2,400</b>	<b>2,040</b>	<b>9,754</b>	<b>40</b>	<b>5,100</b>	<b>627</b>	<b>1,968</b>	<b>158,200</b>	<b>2,100</b>	<b>153,000</b>	

**EXAMPLE "A"**

Committee's last name and first initial **DOE, J**

**Form #5**  
(Mailing Copy)

### Assets and Liabilities Reports

(Financial Summary Reports)

<b>Assets</b>					<b>Opening Balance*</b>	<b>Ending Balance**</b>	
Bank Accounts (from line 500 Bank Account Report)					12,500	22,189	1
Term Deposits, Bonds, GICs (from line 625 Schedule A-1)					162,000	162,000	2
Corporate Bonds (from line 649 Schedule A-2)							3
Stocks (from line 695 Schedule A-3)					10,875	7,500	4
Real Estate (from line 701 Schedule B-1)					150,000	150,000	5
Loans and Mortgages (from line 795 Schedule B-2)							6
Vehicles (from line 801 Schedule C)					2,000	-	7
Household/Personal Effects (from line 802 Schedule C)					5,000	5,000	8
Jewellery/Collectibles/Artwork (from line 803 Schedule C)							9
Business Interests (from line 804 Schedule C)							10
Other Assets (from line 805 Schedule C)							11
Interest in Estate or Trust (from line 950 and 960 Schedule F)							12
							13
<b>Total Assets</b>					<b>\$342,375</b>	<b>\$346,689</b>	<b>30</b>
<b>Liabilities</b>					<b>Opening Balance</b>	<b>Ending Balance</b>	
Loans and Mortgages Payable (from line 901 Schedule D)					50,000	48,500	40
Other Liabilities (from line 902 Schedule E)							41
Remuneration approved previously, not taken							42
Other (please specify)							43
							44
							45
							46
<b>Total Liabilities</b>					<b>\$50,000</b>	<b>\$48,500</b>	<b>50</b>

<b>CASH IN REPORT</b>					<b>Current Period</b>	
					Date: _____	
Bank Account Interest					154	101
Bonds/GIC/Term Deposit Interest (from line 625 Schedule A-1)					9,600	102
Corporate Bond Interest (from line 649 Schedule A-2)						103
Loans and Mortgages Interest (from line 795 Schedule B-2)						104
Dividends (from line 695 Schedule A-3)					40	105
Canada Pension Plan (# of payments _____)					2,400	106
Old Age Security Pension (# of payments _____)					2,040	107
Other Pension (please specify) (# of payments _____)						108
Annuity (# of payments _____)						109
Rental Income (from line 704 Schedule B-1)						110
Sale/Maturity of Bonds, etc. (from line 625 Schedule A-1)					153,000	111
Sale/Maturity of Corporate Bonds (from line 649 Schedule A-2)						112
Sale of Stock (from line 695 Schedule A-2)					4,000	113
Sale of Real Estate (from line 703 Schedule B-1)						114
Sale of Other Assets (from line 807 Schedule C)					1,200	115
Other Receipts (please specify)						116
						117
						118
						119
						120
						121
						122
						123
						124

**Total Cash In**

<b>\$172,434</b>	<b>150</b>
------------------	------------

**Form #7**  
(Mailing Copy)

<b>CASH OUT REPORT</b>				<b>Current Period</b>	
				Date: _____	
Board and Lodging (# of payments _____ )				5,100	201
Personal Expenses					202
Medical (please specify)					203
Homemaker/Caregiver/Therapy Services					204
Dependant's or Spousal Allowance					205
Utility Payments				627	206
Property Maintenance/Renovations				160	207
Income Taxes					208
Property Taxes and Insurance				1,300	209
Legal Fees					210
Accounting Fees					211
Bank Service Charges				48	212
Investment Expenses					213
Committee Remuneration from prior period					214
Committee Bonding Charges				460	215
Public Guardian and Trustee Fees					216
Purchase of Bonds, etc. (from line 625 Schedule A-1)				153,000	217
Purchase of Corporate Bonds (from line 649 Schedule A-2)					218
Purchase of Stocks (from line 695 Schedule A-3)					219
Purchase of Real Estate (from line 702 Schedule B-1)					220
Purchase of Other Assets (from line 806 Schedule C)					221
Other Expenses (please specify)				2,100	222
					223
					224
					225
					226
					227
					228
					229
					230

<b>Total Cash Out</b>	<b>\$162,795</b>	<b>250</b>
-----------------------	------------------	------------

## Bank Account Report

Please use this form to report all money accounts including chequing, savings, investment accounts, investment broker cash accounts and petty cash accounts.

Note: If you have closed any accounts during the current reporting period, please attach a photocopy of the final statement or passbook page.

Bank name and address BANK OF X ----- 4900 A STREET -----	Account number 0000 - xxx	\$	Balance \$22,189
---	------------------------------	----	---------------------

Bank name and address ----- -----	Account number	\$	Balance
---	----------------	----	---------

Bank name and address ----- -----	Account number	\$	Balance
---	----------------	----	---------

**500 Total Bank Accounts**

<b>\$22,189</b>
-----------------

Enter this amount on Line 1  
of the Financial Summary  
Report

**Please attach a photocopy of the statement or passbook page, showing the balance of each account at the end of the current reporting period.**





# Real Estate

## General Instructions:

When you report dollar values, please follow these rules:

- On your first report, use the amounts shown on the Affidavit of Kindred and Fortune
- If this is not your first report, use the amounts you reported previously
- For purchases made during the current reporting period, use the purchase price
- Report only the share of the property value owned by the person whose affairs you manage and the ownership percentage.

## Real Estate owned at the end of the reporting period

### Please attach to this completed schedule:

- a copy of the latest property tax assessment for each piece of property
- a copy of the State of Title Certificate if there have been any changes to the title (like a mortgage registration or change of registered owner), unless you have already sent us one. You can get copies from the Land Title Office.

Address of property 5200 MARY'S STREET SAANICH, B.C.	% Owned 100%	Value of share \$ 150,000
--	-----------------	------------------------------

Name(s) of co-owner(s)
------------------------

Address of property	% Owned %	Value of share \$
---------------------	--------------	----------------------

Name(s) of co-owner(s)
------------------------

Address of property	% Owned %	Value of share \$
---------------------	--------------	----------------------

Name(s) of co-owner(s)
------------------------

**701 Total Real Estate**

↓

\$ 150,000
------------

Enter this amount on Line 5 of the Assets and Liabilities Report

Continued over



## Other Assets

### General Instructions:

When reporting dollar values, please remember:

- If this is your first report, use the amounts shown on the Affidavit of Kindred and Fortune.
- If this is not your first report, use the amounts from the last report you filed.
- For purchases over \$2,000, use the purchase price.
- Please report purchases under \$2,000 made during the reporting period as expenses. Do not report them on this form.

### Vehicles (including cars, boats, trailers, mobile homes, etc.)

Please attach copies of the registration and insurance for each vehicle.

Description	Value
	\$
	\$
	\$



**801 Total Vehicles**

--

Enter this amount on Line 7 of the  
Assets and Liabilities Report

### Household/Personal Effects

List the original amount shown on the Affidavit of Kindred and Fortune and any items over \$2,000.00 purchased during the Committeeship that are still owned at the end of the period.

Description	Value
FURNITURE AND PERSONAL EFFECTS	\$ 5,000
	\$
	\$



**802 Total Effects**

\$ 5,000
----------

Enter this amount on Line 8 of  
the Assets and Liabilities Report

Continued over



**Purchase of Other Assets**

**Schedule C**  
(Mailing Copy)

Complete this section if you purchased any assets over \$2,000. **Please attach copies of any purchase agreements, appraisals, etc.**

What did you buy?
-----
From whom?
-----
Why did you buy it?

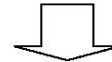
\$ 

Value
-------

What did you buy?
-----
From whom?
-----
Why did you buy it?

\$ 

Value
-------



**806 Purchase Price**

--

Enter this amount on Line 221 of the Cash Out Report

**Sale of Other Assets**

Complete this section if you sold any assets over \$2,000. **Please attach copies of any sale agreements, appraisals, etc., and, for the sale of businesses, copies of the financial statements before the sale.**

What did you sell? <b>AUTOMOBILE YEAR, MAKE AND MODEL</b>
-----
From whom? <b>PURCHASER'S NAME</b>
-----
Why did you sell it? <b>NOT NEEDED</b>

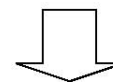
\$ 

Value	<b>1,200</b>
-------	--------------

What did you sell?
-----
From whom?
-----
Why did you sell it?

\$ 

Value
-------



**807 Sale Price**

<b>\$ 1,200</b>
-----------------

Enter this amount on Line 115 of the Cash In Report

## Schedule D - Loan and Mortgage Payable

Please attach the following to support the information you list below:

- a photocopy of the loan or mortgage agreement
- a statement from the lender, covering the reporting period. It should show:
  - principal payments
  - interest payments
  - the balance due at the end of the reporting period.

Description		Previous Balance Due		Current Balance Due
MORTGAGE ON HOUSE	\$	50,000	\$	48,500
-----	\$	-----	\$	-----
-----	\$	-----	\$	-----



**901 Total Loans & Mortgages**

<b>\$ 48,500</b>
------------------

Enter this amount on Line 40 of  
the Assets and Liabilities Report

## Schedule E - Other Liabilities

Please list other liabilities including:

- outstanding credit card balances, showing each amount separately
- amounts due to the Committee

Description		Current Balance Due
-----	\$	-----
-----	\$	-----
-----	\$	-----



**902 Total Other Liabilities**

--

Enter this amount on Line 41 of the  
Assets and Liabilities Report

## Chapter 9 - DEFINITION OF TERMS

The following terms have a particular meaning in accounting, and are used in the record keeping example in Chapter Eight.

### **Assets**

Assets include all the cash or bank accounts, and all rights and belongings of value. These include:

- investments which generate income, such as term deposits, bank accounts, securities, and rental properties;
- items which may not produce income but which increase in value over time, such as antiques, artwork, jewellery, or undeveloped land;
- assets which may decrease in value over time, such as motor vehicles; and
- rights such as an interest under a Will, an annuity, or other type of agreement or a trust fund.

### **Capital Disbursements**

Money used to purchase something of value that will stay in the estate: for example, the purchase price of bonds bought for the estate.

### **Capital Receipts**

The money received when an asset is sold. A GIC you purchased for \$5,000.00 one year ago may mature and pay \$5,200.00. \$5,000.00 is Capital Receipts and \$200.00 interest.

### **Cash In**

The term "cash in" means all cash received from:

- maturing investments such as bonds, Guaranteed Investment Certificates, term deposits, etc.;
- sale of securities, real property, or other assets. The entire amount received is considered as "cash in";
- income or interest earned from investments, pensions, annuities, or other superannuation; and
- all other income including settlements.

### **Cash Out**

The term "cash out" means all payments for:

- care facility charges;
- comfort money for the person whose affairs you manage;
- bonding premiums;
- insurance;
- minor repairs and maintenance of real property;
- major repairs and improvements to real property or other assets;
- purchase of new investments or other assets; and
- all other expenses.

**Fair Market Value**

The amount that a reasonable buyer would pay for an item in a competitive market: for example, the price for which a house would sell if listed for a reasonable length of time, under normal conditions, by a reputable real estate agent.

**Income Receipts**

Income such as pensions, compensation payments, dividends and interest. This includes “new” money coming into the estate that was not already included.

**Inventory**

Your inventory is your list of all assets and liabilities, at fair market value, as listed on the Affidavit of Kindred and Fortune on the date the list is prepared.

**Liabilities**

Liabilities include all outstanding mortgages, loans and other debts that are payable on the date of your appointment. After the amounts are recorded initially, they should be reduced as the principal is repaid.

Current outstanding bills - a monthly telephone bill, for example - should not be included in the initial balance because you will record these when you make the payment.

## Chapter 10 - CONCLUSION

Committeeships are as varied as people's lives. The purpose of this book is to help you perform your duties as Committee and to answer many of your questions. There may be situations not covered here. In those cases, the Public Guardian and Trustee of British Columbia is available to advise and support you.

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

### **Your Comments**

The Public Guardian and Trustee of British Columbia recognizes and respects your commitment to helping a person who is unable to manage his/her own affairs. We hope this handbook will help you through this challenging and rewarding job. We welcome any comments you may have which would make this handbook more useful to Committees.

## Appendix A

### **TRUSTEE ACT**

*23 Section 15 of the Trustee Act, R.S.B.C. 1996, c. 464, is repealed and the following sections are added:*

#### **Investment of trust property**

15.1 (1) A trustee may invest property in any form of property or security in which a prudent investor might invest, including a security issued by a mutual fund as defined in the *Securities Act*.

(2) Subsection (1) does not authorize a trustee to invest in a manner that is inconsistent with the trust.

(3) Without limiting subsection (1), a trustee may invest trust property in a common trust fund managed by a trust company, whether or not the trust company is a co-trustee.

#### **Standard of care**

15.2 In investing trust property, a trustee must exercise the care, skill, diligence and judgment that a prudent investor would exercise in making investments.

#### **Trustee not liable if overall investment strategy is prudent**

15.3 A trustee is not liable for a loss to the trust arising from the investment of trust property if the conduct of the trustee that led to the loss conformed to a plan or strategy for the investment of the trust property, comprising reasonable assessments of risk and return, that a prudent investor would adopt under comparable circumstances.

#### **Abrogation of common law rules: anti-netting rules**

15.4 (1) The rule of general trust law that requires the assessment of the decisions of a trustee on an investment by investment basis if the decisions are called into question is abrogated.

(2) The rule for the assessment of damages for breach of trust that prohibits losses from being off set by gains is abrogated except in respect of circumstances in which the breach is associated with dishonesty on the part of the trustee.

#### **Delegation of authority with respect to investment**

15.5 (1) In this section, "agent" means any person to whom a trustee delegates investment responsibility.

- (2) A trustee may delegate to an agent the degree of authority with respect to the investment of trust property that a prudent investor might delegate in accordance with ordinary business practice.
- (3) A trustee who delegates authority under subsection (2) must determine the investment objectives for the trust and exercise prudence in
- (a) selecting an agent,
  - (b) establishing the terms and limits of the authority delegated,
  - (c) acquainting the agent with the investment objectives, and
  - (d) monitoring the performance of the agent to ensure compliance with the terms of the delegation.
- (4) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.
- (5) A trustee who complies with the requirements of subsection (3) is not liable to the beneficiaries or to the trust for the decisions or actions of the agents to whom the function was delegated.
- (6) This section does not authorize a trustee to delegate authority under circumstances in which the trust requires the trustee to act personally.
- (7) Investment in a mutual fund referred to in section 15.1 (1) or a common trust fund referred to in section 15.1 (3) is not a delegation of authority with respect to the investment of trust property.

### **Interpretation of trust instrument in relation to sections 15.1 to 15.5**

**15.6** For the purposes of sections 15.1 to 15.5 and any investment made after the coming into force of this section, if the terms of the instrument that created a trust express the powers of the trustee as powers to invest property of the trust in the investments permitted under section 15 as that section read at any time before its repeal, the instrument is to be interpreted as authorizing the investments permitted under sections 15.1 to 15.5, unless a particular investment would be expressly authorized or expressly prohibited by the terms of the instrument.

### ***National Housing Act* mortgages**

**16** Despite section 15 (j), a trustee investing trust money in a first mortgage security on land in Canada, if the mortgage is an insured loan under the *National Housing Act* (Canada), is not chargeable with breach of trust merely because the amount of the loan exceeds 75% of the value of the property mortgaged.

**Investment rules**

- 17 (1) In determining market values, a trustee may rely on published market quotations.
- (2) A corporation that is a trustee must not invest trust money in its own securities.
- (3) In the case of an investment under section 15 (e), the inclusion, as additional security under the mortgages, charges or hypothecs, of other assets not of a class authorized by this Act as investments does not render the bonds, debentures or other evidence of indebtedness ineligible as an investment.
- (4) No investment may be made under section 15 (e), (f), (h), (i) or (l) that would at the time of making the investment cause the aggregate market value of the investments made under those paragraphs to exceed 35% of the market value at that time of the whole trust estate.
- (5) For the purpose of subsection (4), investments made by the testator or settlor and retained by the trustee under the authority of the trust instrument and that come within any of the classes authorized by section 15 (e), (f), (h), (i) or (l) are deemed to have been made by the trustee.
- (6) No sale or other liquidation of any investment made under section 15 (e), (f), (h), (i) or (l) is required merely because of a change in the ratio between the market value of that investment and the market value of the whole trust estate.
- (7) In case of investment under section 15 (i) or (l), not more than 30% of the total issue of shares of any corporation may be purchased for any trust.
- (8) No investment may be made under section 15 (i) or (l) unless the shares are listed at the time of investment on a recognized stock exchange.

**Additional investments**

- 18 In addition to the investments authorized by section 15 or by the trust instrument, except if that instrument expressly prohibits the investment, a trustee may invest funds in the other securities the court on application in a particular case approves as fit and proper, but nothing in this section relieves the trustee of his or her duty to take reasonable and proper care with respect to investments so authorized.

## Depositories

- 19 A trustee may, pending the investment of trust money, deposit it during a time that is reasonable in the circumstances in
- (a) a bank, or
  - (b) a corporation that has a business authorization to carry on deposit business.

## Investments in trustee's name

- 20 (1) Except in the case of a security that cannot be registered, a trustee who invests in securities must require them to be registered in his or her name as the trustee for the particular trust for which the securities are held, and the securities may be transferred only on the books of the corporation in his or her name as trustee for the trust estate.
- (2) This section does not apply to a corporation that has a business authorization to carry on trust business.

## **PATIENTS PROPERTY ACT** **[RSBC 1996] CHAPTER 349**

### Definitions

- 1 In this Act: "court" means Supreme Court; "patient" means
- (a) a person who is described as one who is, because of mental infirmity arising from disease, age or otherwise, incapable of managing his or her affairs, in a certificate signed by the director of a Provincial mental health facility or psychiatric unit as defined in the *Mental Health Act*, or
  - (b) a person who is declared under this Act by a judge to be
    - (i) incapable of managing his or her affairs,
    - (ii) incapable of managing himself or herself, or
    - (iii) incapable of managing himself or herself or his or her affairs;

"Public Guardian and Trustee" holding office under the *Public Guardian and Trustee Act*.

"**representation agreement**" means an agreement made under the *Representation Agreement Act*.

**Application and service of notice**

- 2 (1) The Attorney General, a near relative of a person or other person may apply to the court for an order declaring that a person is, because of
- (a) mental infirmity arising from disease, age or otherwise, or
  - (b) disorder or disability of mind arising from the use of drugs,
- incapable of managing his or her affairs or incapable of managing himself or herself, or incapable of managing himself or herself or his or her affairs.
- (2) Subject to subsection (3), a notice setting out the time and place of the application must be served personally on the person who is the subject of the application not less than 10 days before the date of the application.
- (3) On an application under this section, the court may
- (a) direct that any person be served with notice of the application, or
  - (b) dispense with service on any person of notice of the application.
- (4) Despite subsection (3), unless the court is satisfied that service on the person who is the subject of the application would be injurious to that person's health or would for any other reason be inadvisable in the interests of that person, the court must not dispense with service on that person.

**Hearing of application**

- 3 (1) If, on
- (a) hearing an application, and
  - (b) reading the affidavits of 2 medical practitioners setting out their opinion that the person who is the subject of the application is, because of
    - (i) mental infirmity arising from disease, age or otherwise, or
    - (ii) disorder or disability of mind arising from the use of drugs,
- incapable of managing his or her affairs or incapable of managing himself or herself, or incapable of managing himself or herself or his or her affairs,

the court is satisfied that the person is, because of

(c) mental infirmity arising from disease, age or otherwise, or

(d) disorder or disability of mind arising from the use of drugs,

incapable of managing his or her affairs or incapable of managing himself or herself, or incapable of managing himself or herself or his or her affairs, it must, by order, declare the person

(e) incapable of managing his or her affairs,

(f) incapable of managing himself or herself, or

(g) incapable of managing himself or herself or his or her affairs.

(2) The court may, on hearing an application under this section and reading the affidavits described in subsection (1), direct an issue to be tried, and in that event the following provisions apply:

(a) the question in issue is whether the person who is the subject of the application is, because of

(i) mental infirmity arising from disease, age or otherwise, or

(ii) disorder or disability of mind arising from the use of drugs,

incapable of managing his or her affairs or incapable of managing himself or herself, or incapable of managing himself or herself or his or her affairs;

(b) this Act applies to the issue and the trial of it;

(c) the Rules of Court apply;

(d) the court must

(i) dismiss the application, or

(ii) by order, declare that the person who is the subject of the application

(A) is incapable of managing his or her affairs,

(B) is incapable of managing himself or herself, or

(C) is incapable of managing himself or herself or his or her affairs.

**Order declaring person no longer incapable**

4 (1) At any time after one year from the making of an order under section 3 or sooner by leave of the court, the Attorney General, the patient or other person may apply to the court for an order declaring that a patient is no longer

- (a) incapable of managing his or her affairs,
- (b) incapable of managing himself or herself, or
- (c) incapable of managing himself or herself or his or her affairs.

(2) Except by leave of the court, a patient must not be the subject of an application under this subsection more often than once in any year.

(3) If, on

- (a) hearing an application under this section, and
- (b) reading the affidavits of 2 medical practitioners setting out their opinion that the patient is no longer
  - (i) incapable of managing his or her affairs,
  - (ii) incapable of managing himself or herself, or
  - (iii) incapable of managing himself or herself or his or her affairs,

the court is satisfied that the patient is no longer

- (c) incapable of managing his or her affairs,
- (d) incapable of managing himself or herself, or
- (e) incapable of managing himself or herself or his or her affairs, the court may, by order, so declare.

**Examination**

5 (1) If

- (a) an application is made or an issue is tried under section 3,
- (b) an appeal is taken from an order under section 3, or
- (c) an application is made under section 4,

the court hearing the appeal or application or trying the issue may order the person who is the subject of the application or the patient to attend and submit at the time and place the order directs to examination.

- (2) An examination under this section must be made by
  - (a) one or more medical practitioners other than those whose affidavits were before the court on the appeal, application or trial, or
  - (b) a board of 3 or more medical practitioners designated by the College of Physicians and Surgeons of British Columbia at the request of the court.
- (3) If the person who is the subject of the application or the patient requests an examination under this section, unless the court hearing the appeal or application is satisfied that the person or patient is not mentally competent to form and express the request, the court must order the examination.

### **Appointment of committee**

- 6 (1) Subject to section 13, on application by the Attorney General or any other person, the court may appoint any person to be the committee of the patient.
  - (2) On application by the Attorney General, the Public Guardian and Trustee or any other person, the court may, subject to section 13, rescind the appointment of a person appointed as committee.
  - (3) Subject to section 16, except during the time that a person appointed under subsection (1), other than the Public Guardian and Trustee, is the committee of a patient, the Public Guardian and Trustee is the committee of the patient.
  - (4) An application under subsection (1) and an application under section 2 may be made as one application.

### **Service of notice of application to appoint committee**

- 7 Notice in writing of an application to appoint a committee must be served, not less than 10 days before the date of the application, on
  - (a) the Public Guardian and Trustee, and
  - (b) the committee of the patient if one has been appointed.

### **Discharge of committee**

- 8 If the court appoints a committee to succeed another committee, the former committee, on being discharged under section 13,

- (a) ceases to be the committee of the patient, and
- (b) must transfer the estate of the patient to the appointed committee.

**Nomination of committee by patient**

- 9 On an application for the appointment of a committee, if there is presented to the court a nomination in writing of a committee by the patient,
- (a) made and signed by the patient at a time when the patient was of full age and of sound and disposing mind, and
  - (b) executed in accordance with the requirements for the making of a will under the *Wills Act*,
- the nominee must be appointed committee unless there is good and sufficient reason for refusing the appointment.

**Inventory, security and accounts**

- 10 (1) If a committee other than the Public Guardian and Trustee has been appointed under this Act, the following rules apply:
- (a) [Repealed 2003-37-38.]
  - (b) if property belonging to the patient is discovered after the first passing of accounts under paragraph (d) and that property is valued at \$25 000 or more, the committee must, within 30 days of the discovery of the property, deliver to the Public Guardian and Trustee a true account of the property as it is discovered;
  - (c) if ordered by the court, either on the person's appointment as committee or subsequently on the application of the Public Guardian and Trustee, the committee must give security for the proper performance of the committee's duties in the amount the court directs in the form of a bond that must be in the name of the Public Guardian and Trustee, approved by the Registrar of the Supreme Court, and filed with the Public Guardian and Trustee;
  - (d) the committee must pass the committee's accounts before the Public Guardian and Trustee at the times directed by the Public Guardian and Trustee, including, if the Public and Guardian Trustee requires it, a true inventory of the whole estate of the patient, stating the estimated revenue of it and setting out the debts, credits and effects of the patient to the extent they have come to the knowledge of the committee;

(e) if required by the Public Guardian and Trustee, the committee must pass the accounts before the Supreme Court in the county in which the committee was appointed committee.

(2) A committee may at any time appeal the passing of accounts by the Public Guardian and Trustee to the Supreme Court.

### **When a person ceases to be a patient**

11 (1) A person ceases to be a patient on any of the following events:

(a) being discharged from a Provincial mental health facility or a psychiatric unit, under the *Mental Health Act*, except if the Public Guardian and Trustee continues as committee under subsection (2);

(b) an order being made with respect to the person under section 33 (8) (a) or (b) of the *Mental Health Act*;

(c) being released on leave under section 37 of the *Mental Health Act* or being transferred to an approved home under section 38 of the *Mental Health Act*, if one of the conditions specified by the director of the Provincial mental health facility from which the person is released or transferred is that the person ceases to be a patient for the purposes of this Act;

(d) the delivery to the patient's committee of a certificate, signed by the director of a Provincial mental health facility or psychiatric unit as defined in the *Mental Health Act*, that the person is no longer incapable of managing his or her own affairs;

(e) the making of an order declaring that

(i) the patient is no longer incapable of managing his or her affairs,

(ii) the patient is no longer incapable of managing himself or herself, or

(iii) the patient is no longer incapable of managing himself or herself or his or her affairs.

(2) Subject to an order made under section 4, or to a certificate under subsection (1) (d), the Public Guardian and Trustee may continue as committee of the estate of any person who has been discharged from a Provincial mental health facility or psychiatric unit, and may retain the control and administration of the person's estate, so long as it is in the Public Guardian and Trustee's opinion necessary or desirable in the interests of that person or of the person's estate.

(3) Despite anything in this Act to the contrary, the Public Guardian and Trustee may carry out and complete a transaction entered into by the Public Guardian and Trustee in relation to a patient's estate which is not completed before the patient ceases to be a patient.

**Application for discharge of committee**

12 If a person ceases to be a patient, the person or the committee of the person's estate other than the Public Guardian and Trustee may apply, on 10 days' notice in writing to the Public Guardian and Trustee, to the court for the discharge of the committee.

**Passing of accounts**

13 (1) If

(a) an application is made under section 12 for the discharge of a committee other than the Public Guardian and Trustee, or

(b) an application is made for the rescission of the appointment of a committee other than the Public Guardian and Trustee,

the court may, and must if requested by the Public Guardian and Trustee, order that the committee pass the accounts and may, in the order, specify the time and the manner of passing the accounts, and must adjourn the application until the carrying out of the order.

(2) If a committee fails to pass the accounts as ordered, or if the accounts are found to be incomplete or inaccurate, the committee may be required to attend before the court to explain why the accounts have not been passed or a proper proceeding in connection with them taken, and the court may give the direction it considers proper.

(3) After the order made under subsection (1) has been carried out, and the court is satisfied that no further passing of accounts is necessary, the court may order that the committee is discharged.

(4) If the Public Guardian and Trustee or a committee is discharged under this section, the Public Guardian and Trustee or the committee

(a) has no further powers or duties with respect to the estate of the person who has ceased to be a patient, and

(b) is released, except in respect of undisclosed acts, neglects, defaults or accounts or dishonest or unlawful conduct, from all actions, claims and demands for or concerning the Public Guardian and Trustee's or the committee's management or administration of the estate.

## Compensation for acting as committee

- 14 (1) A person may be allowed reasonable compensation from the estate of a patient or from the estate of a person who has ceased to be a patient for services rendered as committee of the patient or of the person who has ceased to be a patient.
- (2) The compensation, if any, to be paid to a person other than the Public Guardian and Trustee must be fixed on the passing of accounts.
- (3) If, in the opinion of a person who is entitled to compensation under this section, the estate of a patient or the estate of a person who has ceased to be a patient is so limited in value that the payment out of it of compensation would create poverty or hardship for the patient or person who has ceased to be a patient or the patient's dependants, no compensation need be claimed or paid or no amount need be retained out of the estate.
- (4) A committee of a patient or a person who has been the committee of a person who has ceased to be a patient has a first lien or charge on the estate of the patient or person who has ceased to be a patient for all costs, expenses and advances made by him or her for or incidental to the administration of the estate of the patient or the person who has ceased to be a patient or for the benefit of the patient or person who has ceased to be a patient, the patient's family or other dependants.

## Powers of committee

- 15 (1) Subject to section 16,
- (a) the committee of a patient as defined by paragraph (a) of the definition of patient in section 1 has all the rights, privileges and powers with regard to the estate of the patient as the patient would have if of full age and of sound and disposing mind,
- (b) the committee of a patient
- (i) declared to be incapable of managing his or her affairs has all the rights, privileges and powers with regard to the estate of the patient as the patient would have if of full age and of sound and disposing mind,
- (ii) declared to be incapable of managing himself or herself has the custody of the person of the patient, and
- (iii) declared to be incapable of managing himself or herself or his or her affairs has all the rights, privileges and powers with regard to the estate of the patient as the patient would have if of full age and of sound and disposing mind, and as well the custody of the person of the patient.
- (2) For investing money, a committee is a trustee within the meaning of the *Trustee Act*.

**Special direction limiting powers of committee**

16 (1) On the appointment of a committee, the court may, by the same order, attach conditions or restrictions on the committee's exercise of certain rights, privileges or powers specified in the order, including requiring the written consent of the Public Guardian and Trustee prior to the committee's exercise of any right, privilege or power.

(2) If, under subsection (1), the court has attached a condition that the consent of the Public Guardian and Trustee is required prior to the committee's exercise of any right, privilege or power, the registrar of the court must send a copy of the court's order to the Public Guardian and Trustee.

**Rights, powers and privileges included**

17 The rights, powers and privileges vested in the committee include all the rights, powers and privileges that would be exercisable by the patient as a trustee, as the guardian of a person, as the holder of a power of appointment and as the personal representative of a person, if the person were of full age and of sound and disposing mind.

**Exercise of powers**

18 A committee must exercise the committee's powers for the benefit of the patient and the patient's family, having regard to the nature and value of the property of the patient and the circumstances and needs of the patient and the patient's family.

**Effect on power of attorney or representation agreement of person becoming a patient by court order**

19 On a person becoming a patient as defined in paragraph (b) of the definition of "patient" in section 1,

(a) every power of attorney given by the person is terminated, and

(b) unless the court orders otherwise, every representation agreement made by the person is terminated.

**Effect on power of attorney or certain representation agreements of person becoming a patient other than by court order**

19.1 (1) On a person becoming a patient as defined in paragraph (a) of the definition of "patient" in section 1, the following are suspended:

(a) every power of attorney that was given by the person;

(b) every provision of a representation agreement made by the person in respect of his or her property unless the representation agreement is one referred to in section 19.2 (1) (b).

(2) After receiving a copy of the suspended power of attorney or of a representation agreement any provision of which has been suspended under subsection (1) and any information that the Public Guardian and Trustee may require, the Public Guardian and Trustee must determine whether it is necessary or desirable for the Public Guardian and Trustee to manage the patient's property under this Act.

(3) If the Public Guardian and Trustee determines that it is necessary or desirable for the Public Guardian and Trustee to manage the patient's property, then on the making of the determination

(a) the power of attorney that was suspended under subsection (1) is terminated, or

(b) the provisions of the representation agreement that were suspended under subsection (1) are cancelled,

as the case may be.

(4) If the Public Guardian and Trustee determines that it is not necessary or desirable for the Public Guardian and Trustee to manage the patient's property,

(a) the Public Guardian and Trustee's authority as committee under the certificate referred to in paragraph (a) of the definition of "patient" in section 1, is terminated on the making of that determination, and

(b) the suspension of the power of attorney or of the provisions of the representation agreement ends on the termination of the Public Guardian and Trustee's authority as committee.

### **Termination of committee if representation agreement applies to all property of person becoming a patient other than by court order**

19.2 (1) This section applies if

(a) before becoming a patient as defined in paragraph (a) of the definition of "patient" in section 1, a person made a representation agreement in respect of which a certificate was completed under section 9 (2) (b) of the *Representation Agreement Act*,

(b) the representation agreement, by virtue of the authority given to a representative under section 9 (1) (g), (h) or (i) of the *Representation Agreement Act*, or under both that section and section 7 (1) (b) or (d) of that Act, applies to all of the person's property, and

(c) the Public Guardian and Trustee receives a copy of each of the following:

- (i) the representation agreement;
- (ii) the certificates referred to in sections 5 (4), 9 (2) (b), 12 (3) and 13 (6) of the *Representation Agreement Act*;
- (iii) an undertaking in the prescribed form signed by the representative.

(2) If the conditions in subsection (1) are met, the Public Guardian and Trustee's authority as committee under the certificate referred to in paragraph (a) of the definition of "patient" in section 1 is terminated on the Public Guardian and Trustee notifying the representative that those conditions have been met.

(3) The Lieutenant Governor in Council may prescribe a form of undertaking for the purposes of subsection (1) (c) (iii).

### **Conveyances**

20 Every gift, grant, alienation, conveyance or transfer of property made by a person who is or becomes a patient is deemed to be fraudulent and void as against the committee if

(a) the gift, grant, alienation, conveyance or transfer is not made for full and valuable consideration actually paid or sufficiently secured to the person, or

(b) the donee, grantee, transferee or person to whom the property was alienated or conveyed had notice at the time of the gift, grant, alienation, conveyance or transfer of the mental condition of the person.

### **Effect of things done by committee**

21 Everything done by a committee in the exercise of the committee's powers under this Act has the same effect with respect to all other persons as if done by the patient at a time when the patient was of full age and of sound and disposing mind.

### **Actions for and against patient**

22 (1) A person other than the committee of the patient must not bring an action on behalf of the patient.

(2) An action against a patient must be brought against the committee as litigation guardian.

### Cost of maintenance, care and treatment

- 23 (1) A patient is liable for the cost of the patient's maintenance, care and treatment and, subject to section 18, the committee must pay out of the estate of the patient the amounts necessary to defray all just and reasonable charges for the maintenance, care and treatment of the patient.
- (2) The Public Guardian and Trustee may permit a patient of whose estate the Public Guardian and Trustee is committee to hold, manage or control a part of the estate to defray normal living expenses or part of them, and the Public Guardian and Trustee is not liable for loss or damage to the estate of the patient resulting from the patient holding, managing or controlling that part of the estate.

### Death of patient

- 24 (1) Subject to subsection (2), on the death of a patient and until letters probate of the will or letters of administration of the estate of the patient are granted and notice in writing of the grant is served on the committee, the committee of the patient
- (a) continues to have the rights, powers, duties and privileges that the committee would have had if the patient had not died, and
  - (b) has the powers of an executor of the last will and testament of or the administrator of the estate of the patient.
- (2) Despite section 10 (1) (d), the Public Guardian and Trustee must not require the committee to pass accounts before the Public Guardian and Trustee after the death of the patient.
- (3) After the death of the patient, the committee must provide the committee's accounts to
- (a) the executor or administrator of the patient's estate, or
  - (b) if the committee and the executor or administrator of the patient's estate are the same person, the beneficiaries of the patient's estate.
- (4) The executor, administrator or beneficiaries of the patient's estate may provide to the committee written approval of, and consent to, the accounts received under subsection (3).
- (5) If a committee fails to provide its accounts as required under subsection (3), or if the accounts are incomplete or inaccurate, a person entitled to the accounts may require the committee to attend before the court to explain the committee's failure to provide the accounts or to provide a satisfactory accounting, and the court may give the direction it considers proper.

(6) The court may, on being satisfied that no further accounting by the committee is necessary, order at any time that the committee is discharged.

### **Sections Repealed**

25 and 26 [Repealed 1999-25-23.]

### **Costs**

27 The costs of all proceedings under this Act are in the discretion of the court.

### **Orders by court**

28 If there is insufficient provision in this Act, the court may at any time, on the application of any person, make an order not in contradiction to this Act or the regulations that it considers necessary for or in the interests of the proper, honest and prudent management and administration of the estate of a patient.

### **Section Repealed**

29 [Repealed 1999-25-23.]

### **Appointment of new Public Guardian and Trustee**

30 (1) If a new Public Guardian and Trustee is appointed, the new Public Guardian and Trustee is committee to every patient of whom the predecessor was the committee.

(2) [Repealed 1999-25-23.]

### **Persons outside British Columbia**

31 (1) If a person resident in another province who would be, if resident in British Columbia, a patient as defined under this Act has estate in British Columbia, the Lieutenant Governor in Council may appoint the person who is charged with the duty of managing, handling, administering or caring for the estate of that person in that province to be the committee of the estate of the person in British Columbia.

(2) The order in council making an appointment under subsection (1) is conclusive evidence that all conditions precedent to the appointment have been fulfilled.

(3) Every person appointed a committee under subsection (1)

(a) has as committee in respect to the estate of the person in British Columbia the same rights, powers, privileges and immunities as are conferred by this Act on the Public Guardian and Trustee as committee of a patient in British Columbia, and

(b) is subject to the same obligations and must perform the same duties

and this Act applies to the person in the same manner as to the Public Guardian and Trustee acting as the committee of the estate of the person.

(4) All acts of a person appointed committee under this section are binding in all courts and land title offices in the same manner and to the same extent as the acts of the Public Guardian and Trustee acting as the committee of the estate of a patient are binding.