

**WHEN THE
PUBLIC GUARDIAN AND TRUSTEE
IS COMMITTEE**



**PUBLIC GUARDIAN
AND TRUSTEE OF
BRITISH COLUMBIA**

March 2005

WHEN THE PUBLIC GUARDIAN AND TRUSTEE IS COMMITTEE

The purpose of this booklet is to explain the services provided by the Public Guardian and Trustee as Committee of the Estate and/or Person for adults who are declared incapable.

The Public Guardian and Trustee operates under Provincial law and is appointed to uphold the legal rights and safeguard the financial interests of children and adults, and to administer the estates of deceased and missing persons.

Each year, thousands of people call us to find out what they can do to help an adult - often a friend or relative - who is not able to manage finances and legal matters on his or her own. In most situations, the person calling is able to provide the help that is needed. This is important, as the people who have been close to the adult requiring the help will often also provide the optimal in caring and compassionate assistance. For more information on how you can help people manage finances and legal matters when they cannot manage on their own, please call (604) 660-4444 to request a publication or visit our website at www.trustee.bc.ca.

When Would the PGT Act as Committee?

When a person needs help to manage due to an illness, accident, disability or diseases associated with aging, his or her judgement may be impaired in some way. The person may no longer be able to perform daily tasks which are important to one's health and safety. He or she may forget to pay bills or may put money away and forget where it is. The person may be confused about banking, investments, property, and personal belongings. He or she may not be able to take care of personal health needs and may be unable to make informed decisions about medical treatment. As a result this person becomes vulnerable in our society.

In many cases the adult may have authorized someone else to make decisions through an Enduring Power of Attorney or Representation Agreement. If this is not in place, there is a demonstrated need for authority and no one else can assist, the Public Guardian and Trustee may be appointed as Committee.

Although a person may be incapable of managing his or her own financial and legal affairs or making personal decisions, he or she may still be capable of making some decisions. The Public Guardian and Trustee's goal is to provide the level of help the person needs, and to make decisions, where necessary, that the person would have made had she or he been capable. Each person's situation is unique.

The decision as to whether a person is capable of managing his or her financial and legal affairs or making personal decisions, is a legal one, based on medical evidence. A doctor must examine the person and determine whether he or she has the mental capacity to understand the impact of the decisions that must be made, whether financial or legal, or personal health care or proposed medical treatment.

What is a Committee?

The term **Committee of Estate** refers to the person appointed under the *Patients Property Act* to make financial and legal decisions for the adult requiring assistance. A private citizen, trust company or the Public Guardian and Trustee can act as a Committee of the Estate.

The Committee has many responsibilities, including receiving the person's income, securing assets, conducting banking, paying all expenses, and budgeting for his or her family. If it is in the adult's best interest, the Committee may sell personal effects and real estate and enter into contracts on his or her behalf. The Committee is also responsible for making investment decisions about initiating and defending all lawsuits involving the adult.

The term **Committee of Person** refers to the adult's representative who has been appointed to make decisions related to his or her physical well-being, including where he or she lives or whether medical treatment will be agreed to. A Committee of the Person is granted by a Court Order, issued by the Supreme Court of B.C.

What is a Private Committee?

Most of the time, a friend, family member or trust company is appointed to manage the affairs of a person who needs help; the term we use is **Private Committee**. A Private Committee is appointed by Court Order in the Supreme Court of British Columbia, usually with a lawyer's assistance. If you are interested in being appointed as a Committee, please see our booklet "How You Can Help People Manage Finances and Legal Matters When They Cannot Manage On Their Own."

Who is the Public Guardian and Trustee?

The Public Guardian and Trustee is a person appointed to protect the legal rights and financial interests of people who cannot protect their own interests and who have no one else who can handle this responsibility. The staff who work with the Public Guardian and Trustee to provide these services, make up the office of the Public Guardian and Trustee. The Public Guardian and Trustee operates at 'arm's length' from government to protect the rights and interests of the office's clients.

One of the duties of the Public Guardian and Trustee is to act as Committee and assist people who are incapable of managing their Estate and/or Person when no one else is willing and able to act for them.

The Public Guardian and Trustee also reviews all applications from private individuals who want to become Private Committees. The Public Guardian and Trustee makes recommendations to the Court as to the suitability of the application by the person who wishes to be appointed Committee. The Public Guardian and Trustee monitors how the affairs of the person who cannot manage on his or her own are administered by reviewing reports filed by the Private Committees.

How is the Public Guardian and Trustee Appointed Committee?

The Public Guardian and Trustee is appointed Committee in one of the following ways:

- a) by Certificate of Incapability issued by a Director of a Mental Health Facility or Hospital Psychiatric Unit (only the Public Guardian and Trustee can be appointed in this manner, and a certificate can only appoint the Public Guardian and Trustee Committee of Estate, not Committee of Person);
- b) by order of the Supreme Court of B.C. after a Judge has considered the sworn opinion of two medical doctors.

Why the Public Guardian and Trustee and Not a Private Committee?

When a person becomes incapable of managing his or her own estate or person (and no enduring power of attorney of representation agreement exists), usually a friend or relative applies to the Court to be appointed Committee. The Public Guardian and Trustee acts as Committee in cases where there are no family or friends who are willing and able to act, or when there is a dispute among family members about committeeship and a neutral party is preferred.

The Public Guardian and Trustee provides efficient and professional services as Committee, but of course cannot always provide the additional personal care and service the way a loved one can.

Frequently, adults require assistance with their finances and legal matters, but can manage their own personal and health care needs. Therefore, a Committee of the Person may not be needed. Under the *Health Care (Consent) and Care Facility (Admission) Act* the Public Guardian and Trustee is already authorized to act as a temporary substitute decision maker as a last resort for health care decisions. Therefore, the more formal authority of Committee of Person is rarely needed.

Can Committees be Replaced?

Yes. The Public Guardian and Trustee or a Private Committee can be replaced if a Court Order is made appointing a new Committee. Where a Private Committee dies, or themselves become incapable, the Public Guardian and Trustee becomes the committee until the court appoints a new Private Committee.

For What Length of Time is a Committee Appointed?

A Committee is appointed until either a Court Order reverses the appointment, the person becomes capable, someone else is appointed or the person dies and an executor or administrator is appointed. Where a certificate of incapability was issued, a Mental Health Center can reverse the Committeeship if medical evidence shows that the person is capable.

How is a Committeeship Terminated?

The procedure for ending a committeeship under the *Patients Property Act* depends on whether committeeship was created by Certificate of Incapability or Court Order.

Committeeship by Certificate

(a) If you are now capable:

If you are mentally capable you may wish to pursue a Certificate of Capability to end the Public Guardian and Trustee's authority whether or not you have been discharged. Your Case Manager can assist you in arranging this.

A Court Order of Capability or the court appointment of a different committee will also end the Public Guardian and Trustee's authority when it was obtained through a Certificate of Incapability.

(b) If you have been discharged from a mental health facility or psychiatric unit:

If the Public Guardian and Trustee has authority to act as Committee of Estate through a Certificate of Incapability and an adult is discharged from a provincial mental health facility or psychiatric unit, the *Patients Property Act* gives the Public Guardian and Trustee the discretion to discontinue involvement as Committee of Estate.

If you or your support network feel that the Public Guardian and Trustee does not need to be involved in your affairs and you have been discharged from a mental health facility or a psychiatric unit under the *Mental Health Act*, contact your Case Manager at (604) 660-4444.

Your Case Manager can assist you to determine if you have been formally discharged. This may mean helping you to obtain written confirmation from the Director of the facility or unit that you were in.

The Case Manager will review a number of factors including client and family wishes, the history of PGT involvement, your living environment, and your current or potential financial and legal situation to determine if the Public Guardian and Trustee needs to remain your Committee under the *Patients Property Act*.

Recommendations for termination of committeeship are made by the Case Manager to the Director of Services to Adults. The Director will decide whether the committeeship needs to continue.

Committeeship by Court Order

If the committeeship was obtained through a Supreme Court Order, there is no administrative method to terminate the committeeship. This applies whether the Public Guardian and Trustee, a trust company or a private individual is the Committee. The only way to end a court-ordered committeeship is if the adult is capable. If this is the case, a new Court Order is required to end the committeeship. Two medical opinions from physicians are required and a lawyer will need to assist. Where the Public Guardian and Trustee is the Committee, your Case Manager can help coordinate this process.

How Does the Public Guardian and Trustee Manage a Client's Affairs?

When the Public Guardian and Trustee is appointed by the Court to manage someone's affairs, this person becomes a client of the Public Guardian and Trustee. The Public Guardian and Trustee, like any other Committee, has a duty to protect the client's property and is the only person with authority to deal with those assets. All property continues to belong to the client and is held in trust in the client's name. The Public Guardian and Trustee's duty as Committee is to manage the assets for the client's benefit and his or her family's maintenance and care, and to involve family and friends, whenever possible, in making decisions. If an adult is declared capable to manage his or her own affairs, all assets are returned to him or her.

Can the Client Manage Assets While the Public Guardian and Trustee is Committee?

It is the Public Guardian and Trustee's goal as Committee to maximize the client's independence, and to allow the person to remain in as much control of his or her financial and legal decisions as possible. To the extent that the assets are secure, the Public Guardian and Trustee will try to minimize the office's involvement.

Does the Public Guardian and Trustee Administer all Cases in the Same Manner?

No. Each client's financial and legal affairs are administered on an individual basis, to serve the person's best interests. Factors such as the person's medical condition, the value and nature of his or her property, income, and needs are all considered in administering the finances and legal matters.

If a spouse, family members, or other dependent people live in the family home, their interests will also be considered in any decisions that are made.

If the client is likely to regain capability to manage their property, the Public Guardian and Trustee prefers to hold all assets by preserving the property until the assets are returned to the person.

However, this is not always the case. Many assets (e.g. automobiles and speculative stocks) may depreciate in value if they are not converted into cash. Often, the needs of the client's family, demands of creditors, costs of storage and other circumstances require selling assets. Also, by nature, some assets are best converted into cash if they are difficult to protect. Each client's particular circumstances determine the best option for that person.

Will the Public Guardian and Trustee Consult with the Client and Family Concerning the Sale of His or Her Assets?

Yes. It is the Public Guardian and Trustee's policy to involve the client and his or her family in all major financial and legal decisions, subject to the client's wishes and ability to understand, the interest and availability of family, how urgent the matter is and confidentiality.

What will Happen to the Client's Assets?

- **Bank Account** - It will be frozen so that no one can write cheques on it. If the client is likely to be incapable for any length of time, the bank account is usually closed and the proceeds invested in a trust account established for the client with the Public Guardian and Trustee.
- **Joint Bank Account with Another Person** - When a client has a joint bank account with another person, a number of things are considered, such as the nature and intent of the account when it was created. Each situation is dealt with on an individual basis.
- **Cash** - It is credited to the client's trust account with the Public Guardian and Trustee.
- **Contents of a Safety Deposit Box** - The contents are listed and usually left in the safety deposit box. If the client's affairs are likely to be managed by the Public Guardian and Trustee for a lengthy time, the box is closed and the contents removed for safekeeping by the Public Guardian and Trustee.
- **Stocks and Bonds** - Some may be sold if cash is needed. Otherwise, if the client is likely to recover fairly quickly, they are held. If the clients affairs are likely to be managed by the Public Guardian and Trustee for a length of time, the investments are evaluated and may be sold.

- **Furniture and Other Personal Belongings** - If the person is likely to continue living on his or her own, furnishings and other belongings will be left with them. If the person does not require his or her furniture and other belongings because he or she is not living independently, these items can be stored. This is only possible if the client can afford to pay the storage charges. If the person is not likely to need the belongings, they may be sold at public auction and the proceeds credited to his or her trust account.
- **Real Estate** - If the client continues to live at home or is likely to return home, every effort will be made to preserve his or her residence. If a stay in the hospital is expected to last only a short time, the home will be secured and left vacant. If the anticipated length of hospitalization is longer, the belongings will be moved to storage and the home may be rented. All this assumes that the client has money to cover expenses such as taxes, mortgage, repairs, and other costs related to maintaining property. If the client cannot afford to cover these expenses or will never use the property again, and renting the property is not appropriate, it may be sold. The client and their closest relatives, if known to the Public Guardian and Trustee, are consulted prior to the sale of the property. Before a property is sold it is appraised to ensure the best price for it is obtained.
- **Automobile** - In some cases, the client is still able to drive a car, so if the client has sufficient funds, the Public Guardian and Trustee will look after the payment of car insurance and operating costs related to the vehicle. In many cases, the client will not be using the car. Usually the value of an automobile depreciates and the cost of adequate, safe storage mounts rapidly. As a result, unless there are special reasons to store the car, it is generally sold at public auction at the earliest opportunity. Members of the client's immediate family may be authorized to drive the car, but proof of adequate insurance coverage is always required in such cases.

Will the Client's Extra Money be Invested?

Yes, all cash held in trust by the Public Guardian and Trustee on behalf of the client is invested. The income earned is credited to the person's trust account monthly.

Does the Public Guardian and Trustee Collect Money Payable to the Client?

Yes. Some examples include wages, pensions, disability payments, Workers' Compensation Board payments, annuities, mortgage and agreement for sale payments, investment income, rents, and legacies. As Committee, the Public Guardian and Trustee is the only person who can cash these cheques or give a valid receipt on this person's behalf.

Who Pays the Client's Bills?

The Public Guardian and Trustee pays these expenses from the client's trust fund. If the client is in a care facility, the office pays his or her maintenance charges and provides additional money for small purchases if the person can afford this. If the client lives on his or her own these expenses could include all the costs related to day-to-day living like paying hydro, medical, etc. If the person does not have money to cover these living expenses, the Public Guardian and Trustee will apply for income assistance on his or her behalf.

Can the Client's Family Take Over and Use the Assets?

Not without the Public Guardian and Trustee's consent. As a general rule, the client's assets are his or her own assets, and the fact that he or she may be unable to use them does not transfer the ownership to others.

If the Client's Dependents are in Need, Will the Public Guardian and Trustee Assist them From the Client's Assets?

Yes. The type and amount of assistance will depend upon the circumstances in each case. The Public Guardian and Trustee will consider the wishes and needs of the client, the legal obligation of the client to support the family member, the needs of the dependents and the assets available. If a client's dependents require assistance, they should contact the office. (A dependent is usually a child under 19 years of age or a spouse).

Can the Public Guardian and Trustee Use Government Funds to Cover the Client's Debts and Assist His or Her Family?

No. The Public Guardian and Trustee only administers the client's own assets. If the person qualifies for social assistance, Government pension, or other public funds, the Public Guardian and Trustee will apply for this assistance.

How Does Information You Have Assist the Client?

Unless the Public Guardian and Trustee has full knowledge of a client's affairs, including assets, income, debts and other responsibilities, it is impossible to make the best possible management decisions for this person. In many cases, the client is not able to fully describe his or her affairs. Therefore, information has to be put together from various sources, primarily from relatives and friends close to the client. Wherever possible, a questionnaire designed to help gather this information is sent to relatives and friends. When a promptly completed questionnaire is returned to the Public Guardian and Trustee, it greatly assists us in managing the client's affairs.

Will Information Relating to the Client's Affairs be Given to Others?

It depends on the particular person's wishes and situation. The Public Guardian and Trustee's goal is to protect the person's privacy. However, some financial or other information may be shared if it is necessary to provide support to the client.

Is there a Charge for Public Guardian and Trustee Services?

Yes. Under the *Public Guardian and Trustee Fees Regulation*, the Public Guardian and Trustee, as Committee, charges fees as follows:

- (a) Commission of 5% of the gross value of the estate and 5% on income earned;
- (b) Asset management fee of 0.4 of 1% per year, calculated monthly, on the gross value of all assets.

The Public Guardian and Trustee also charges a client's account when costs are incurred on his or her behalf for specialized services such as professional advice for real estate, income tax, legal matters and asset storage, protection and maintenance.

Who Manages the Client's Affairs at the Public Guardian and Trustee?

At the Public Guardian and Trustee, each client's financial and legal affairs are managed by a Client Service Team which includes a Case Manager and staff with financial expertise. If you have questions about a client's affairs, they should be referred to the specific Case Manager. If you do not know the Case Manager's name, please give the client's name to the receptionist or switchboard operator, and you will be connected to the right Case Manager. The client's relatives are encouraged to talk to the Case Manager and to discuss the client's preferences and concerns so that our office can provide the best possible service to our client. Any information that can give our office a better understanding of the client's circumstances, or family situation, will make it possible for us to provide better service to the client.

If you have concerns about how we manage a client's affairs, please discuss it with the Case Manager. If this does not solve the problem, ask to speak to the Regional Manager.

If a Client Dies, What Happens to His/Her Assets?

If the client should die while the Public Guardian and Trustee is Committee of the Estate, all of the client's assets become part of that client's estate and his or her Will determines what happens to them. Assets are transferred to the person's executor or administrator and, eventually, to the deceased's beneficiaries or heirs.

This booklet is meant to give a broad outline of the role of the Public Guardian and Trustee as Committee. For further information, please contact:

Greater Vancouver Region

700-808 West Hastings Street
Vancouver, BC V6C 3L3
Tel: (604) 775-1007
Fax: (604) 660-9498

*Vancouver, North Shore, Richmond,
Delta, Sunshine Coast*

Vancouver Island Region

1019 Wharf Street, 4th floor
Victoria, BC V8W 9J2
Tel: (250) 356-8160
Fax: (250) 356-7442

*Vancouver Island, Powell River
and Gulf Islands*

Lower Mainland Region

700-808 West Hastings Street
Vancouver, BC V6C 3L3
Tel: (604) 775-1001
Fax: (604) 660-9479

*Burnaby, Tri-Cities, North Fraser
and Fraser Valley*

Interior-North Region

1345 St. Paul Street
Kelowna, BC V1Y 2E2
Tel: (250) 712-7576
Fax: (250) 712-7578

*Interior and Northern BC, east
and north of Hope*

TO ORDER MORE PUBLICATIONS

Phone: (604) 660-4444
Fax: (604) 775-0207
Email: mail@trustee.bc.ca



PUBLIC GUARDIAN
AND TRUSTEE OF
BRITISH COLUMBIA