WHEN THE PUBLIC GUARDIAN AND TRUSTEE IS COMMITTEE

PUBLIC GUARDIAN
AND TRUSTEE OF
BRITISH COLUMBIA

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Adults who are not able to manage finances and legal matters on their own are vulnerable. Each year many people contact the Public Guardian and Trustee (PGT) to find out what they can do to help an adult - often a friend or relative – who cannot manage on their 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 best care and compassionate assistance.

For more information on how you can help people manage finances and legal matters when they cannot manage on their own visit our website at www.trustee.bc.ca for more information or call, 604.660.4444 to request a publication.

When Would the PGT Act as Committee?

When an adult needs help to manage due to an illness, accident, disability or diseases associated with aging, their judgment may be impaired in some way. The adult may no longer be able to perform daily tasks which are important to their health and safety. They may forget to pay bills or may put money away and forget where it is. The adult may be confused about banking, investments, property, and personal belongings. They 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, the adult 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 these are not in place and there is a demonstrated need for authority and no one else can assist, the PGT may be appointed as Committee.

Although an adult may not be capable of managing their own financial and legal affairs or making personal decisions, they may still be capable of making some decisions. The PGT's goal is to provide the level of help the adult needs, and to make decisions, where necessary, that the adult would have made had they been capable. Each adult's situation is unique.

The decision as to whether an adult is capable of managing their financial and legal affairs or making personal decisions is a legal one, based on medical evidence. A doctor must examine the adult and determine whether they have the mental capacity to understand the impact of the decisions that must be made, whether financial, legal, personal or health care decisions.

IMPORTANT NOTE: The PGT is providing this information to describe the services it provides when acting as Committee of Estate and/or Person for adults who have been declared legally incapable. This publication may refer to legal requirements but it is not legal advice. It is general information and is not a substitute for professional legal advice. If you need legal advice related to Committeeship, contact a lawyer or your local community law office.

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 PGT can act as a Committee of Estate.

The Committee has many responsibilities, including receiving the adult's income, securing assets, conducting banking, paying all expenses, and budgeting for their family. If it is in the adult's best interest, the Committee may sell personal effects and real estate and enter into contracts on their behalf. The Committee is also responsible for making investment decisions and 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 their physical well being, including where they live 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 British Columbia.

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 PGT calls this a 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 guide Private Committee Handbook.

What is the Public Guardian and Trustee?

The PGT is appointed to protect the legal rights and financial interests of adults who cannot protect their own interests and who have no one else who can handle this responsibility. The PGT is independent of government in its client related decision making and has a duty of undivided loyalty to the interests of its clients.

One of the PGT roles is to act as Committee of Estate and/or Person and assist adults who are incapable of managing their own financial, legal and/or personal matters when no one else is willing and able to act for them.

The PGT also reviews all applications from private individuals who want to become Private Committees. The PGT makes recommendations to the court as to the suitability of the application by the person who wishes to be appointed Committee. The PGT has the responsibility to review reports filed by Private Committees and to investigate concerns.

How is the Public Guardian and Trustee Appointed Committee?

The PGT 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 PGT can be appointed in this manner, and a certificate can only appoint the PGT as Committee of Estate, not Committee of Person); or

b) by order of the Supreme Court of British Columbia after a judge has considered the sworn opinion of two medical doctors.

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

When an adult becomes incapable of managing their own estate or person (and no Enduring Power of Attorney or Representation Agreement exists), usually a friend or relative applies to the court to be appointed Committee. The PGT acts as Committee in cases where there are no family or friends who are willing and able to act, or when there is a conflict among family members about committeeship and a neutral party is preferred. The PGT provides efficient and professional services as Committee, but cannot 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 PGT 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 PGT or a Private Committee can be replaced if a court order is made appointing a new Committee. If at any time there is no Private Committee (for example, if the Private Committee has died) the PGT becomes 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 director of a mental health center or hospital psychiatric unit 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 the committeeship was created by Certificate of Incapability or court order.

Committeeship by Certificate

When the PGT is Committee by a Certificate of Incapability, the committeeship can be ended under the *Patients Property Act*:

a) By Certificate of Capability signed by a Director of a mental health facility or psychiatric unit;

b) If the court makes an order of capability which requires two medical assessments; or

c) By discharge from a mental health facility or psychiatric unit unless the PGT determines it is necessary or desirable to continue to act as Committee.

d) If there is an Enduring Power of Attorney, or a Representation Agreement that deals with the adult's financial affairs, and the Enduring Power of Attorney, or a Representation Agreement would otherwise be valid and there have been no concerns, the PGT may be able to terminate its authority as Committee.

The PGT may assist with coordinating the appropriate assessments.

Committeeship by Court Order

If the committeeship was obtained through an order of the Supreme Court, there is no administrative method to terminate the committeeship. This applies whether the PGT, 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 PGT is the Committee, the client's case manager can help coordinate this process.

Who Manages the Client's Affairs When the PGT is Committee?

Each PGT client's financial and legal affairs are managed by a Client Service Team which includes a case manager and staff with financial expertise. If there are questions about how the PGT is managing the client's affairs, this can be discussed with the case manager. Relatives are encouraged to talk to the case manager and to discuss the client's preferences and concerns so that the case manager can provide the best possible service. Any information that can give the case manager a better understanding of the client's circumstances, or family situation, will help make it possible to provide better service.

If you have concerns about how a client's affairs are being managed, please discuss it with the case manager. If this does not solve the problem, ask to speak to the Regional Manager.

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

When the PGT is appointed by the Court to manage an adult's affairs, the adult becomes a client of the PGT. The PGT, like any other Committee, has a duty to protect the client's property and has 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 PGT's duty as Committee is to manage the assets for the benefit of the client and their legal dependent(s). The PGT will involve family and friends, whenever possible, in making decisions. If the client is declared capable to manage their own affairs, all assets are returned.

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

As Committee, the PGT supports and promotes a client's independence. To the extent that the assets are secure and the adult is able, the PGT will try to minimize its involvement in day to day decisions such as grocery shopping, entertainment, etc. Many clients still maintain and use their external bank account.

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 adult's medical condition, the value and nature of their property, income, and needs are all considered in administrating the finances and legal matters.

If a spouse, family member, or other legal dependents live in the family home, their interests will also be considered in any decisions that are made.

Decisions regarding disposition of assets are also unique to the client's situation.

Many assets (e.g., motor vehicles 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.

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

The PGT involves the client and his or her family in all major financial and legal decisions, subject to such things as the client's wishes, prior history 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?

- **External Bank Accounts** - Where a client continues to need an external bank account these will be retained but restricted to safeguard the client's interests. If the client is unable to access the bank account it will usually be closed and the proceeds invested in a trust account established for the client with the PGT.

- **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 PGT.

- **Contents of a Safety Deposit Box** - The PGT is responsible to ensure all significant assets are inventoried and secured. Usually the box is closed out and items removed for safekeeping.

- **Stocks and Bonds** - Some may be sold if cash is needed. Otherwise, if the client is likely to recover fairly quickly, or a Private Committee is to be appointed, they are held. If the client's affairs are likely to be managed by the PGT for a length of time, the investments are evaluated and transitioned into a PGT managed investment account.

- **Furniture and Other Personal Belongings** - If the client is likely to continue living on their own, furnishings and other belongings will be left with them. If the client does not require their furniture and other belongings because they are not living independently, these items can be stored. This is only possible if the client can afford to pay the storage charges. If the client is not likely to need the belongings, they may be sold at public auction and the proceeds credited to their 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 their 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. This can be arranged when the client has sufficient resources 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 not likely use the property again, it may be sold. The client and their closest relatives, if known to the PGT, are consulted prior to the sale of the property. Before a property is sold it is appraised to ensure the best price is obtained from the sale.

- **Motor Vehicles** - In some cases, the client is still able to drive a motor vehicle, so if there are sufficient funds, the PGT will arrange payment of vehicle insurance and operating costs related to the vehicle. In many cases, the client will not be using the vehicle. Usually the value of a vehicle depreciates and the cost of adequate, safe storage mounts rapidly. As a result, unless there are special reasons to store the vehicle, it is generally sold at public auction at the earliest opportunity. Members of the client's immediate family may be authorized to drive the vehicle, but proof of adequate insurance coverage is always required in such cases.

If a Client Dies, What Happens to Their Assets?

If the client dies while the PGT is Committee of Estate, all of the client's assets become part of that client's estate. Their will, or the provincial intestacy rules, determine how the assets are distributed. Assets are transferred to the person's executor or administrator who is responsible for distributing the estate assets to the deceased's beneficiaries or heirs. Until the assets have been transferred, the PGT safeguards the assets and continues to collect income. During this period the file is managed through the PGT estate liaison department in Vancouver and an estate liaison officer is assigned.

Will the Client's Money be Invested?

Yes. All cash held in trust by the PGT on behalf of the client is invested. The income earned is credited to the person's trust account regularly.

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

Yes. Some examples include wages, pensions, disability payments, WorksafeBC payments, annuities, mortgage and agreement for sale payments, investment income, rents and legacies. As Committee, only the PGT can cash these cheques or give a valid receipt on the client's behalf.

Who Pays the Client's Bills?

The PGT pays these expenses from the client's trust fund. If the client is in a care facility, the PGT pays their maintenance charges and provides additional money for small purchases if the client can afford this. If the client lives on their own, these expenses could include all the costs related to day to day living like paying hydro, medical, etc. If the adult does not have money to cover these living expenses, the PGT will apply for income assistance on their behalf. Where the client is able to manage some day to day expenses, funds will be made available to their external bank account.

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

Not without the PGT's consent. The client's assets are their own assets, and the fact that they 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 Use the Client's Assets to Assist Them?

Yes. The type and amount of assistance will depend upon the circumstances in each case. The PGT 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 PGT (a dependent is usually a child under 19 years of age or a spouse). Where a significant gift is requested, a court order may be required to authorize a gift.

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

No. The PGT only administers the client's assets. If the client qualifies for social assistance, government pension, or other public funds, the PGT will apply for this assistance.

How Does Information You Have Assist the Client?

Unless the PGT has full knowledge of a client's affairs, including assets, income, debts and other responsibilities, it is difficult to make the best possible management decisions for the client. In many cases, the client is not able to fully describe their 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. Responses to the questionnaire greatly assist in managing the client's affairs, particularly when they are submitted promptly.

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

Sharing any information would occur only if required and permitted under law and would depend on the client's wishes and situation. The PGT has the responsibility to protect privacy. However, some financial or other information may be shared if it is necessary to provide support to the client, or for the PGT to carry out its duties.

Is there a Charge for Public Guardian and Trustee Services?

Yes. Under the *Public Guardian and Trustee Fees Regulation*, the PGT, 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 client is also responsible for expenses such as professional advice for real estate, income tax, legal matters and asset storage, protection and maintenance.

Contact the Public Guardian and Trustee

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

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

Interior-North Regional Office
1345 St. Paul Street,
Kelowna, BC V1Y 2E2
Tel: 250.712.7576
Fax: 250.712.7578
email: kpifaa@trustee.bc.ca

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

Website: www.trustee.bc.ca | email: mail@trustee.bc.ca

Toll free calling is available through Service BC. After dialing the appropriate number for your area (below), request to be transferred to the Public Guardian and Trustee (regular office hours 8:30am-4:30pm, Mon-Fri).

Vancouver: 604.660.2421
Victoria: 250.387.6121
Other areas of BC: 1.800.663.7867

PUBLIC GUARDIAN AND TRUSTEE OF BRITISH COLUMBIA

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