

Fostering Independence and Decision Making

Changes to the *Patients Property Act* (December 2014) and your duties as a Committee

A number of British Columbia laws recognize an adult's right to participate in decision making, even if someone else has authority to make decisions on behalf of the adult. This right was officially incorporated into the *Patients Property Act* in December 2014 and states that:

A committee must, to the extent reasonable, foster the independence of the adult and encourage the adult's involvement in any decision making that affects the adult (Section 18(2)).

The legislation acknowledges an important value – the right to contribute to decisions impacting one's own life as well as the responsibility of committees to foster independence. It reinforces the National Guardianship Association position that guardianship should allow the maximum retention of individual rights, be customized to the needs of the person under guardianship, and be grounded in demonstrating respect for the dignity of all involved. Efforts should be made to encourage every person under guardianship to participate, to the maximum extent of the person's abilities, in all decisions that affect him/her and to act on his/her own behalf in all matters in which the person is able to do so.

The Role of a Private Committee in fostering independence

The new legislation requires a committee to provide the support and assistance necessary to allow the adult to participate in decisions that are important to him/her, balancing the responsibilities of acting as a fiduciary and promoting the adult's voice.

This means that when committees need to make a decision, they should consult with the adult, to the greatest extent possible, in order to determine the adult's current wishes. By exploring the adult's wishes and beliefs, committees can help foster independence and encourage the adult's input into decisions affecting his/her quality of life.

Many private committees have told the Public Guardian and Trustee (PGT) they didn't know if they should let the adult manage some of his/her own affairs. This new statutory duty clarifies that independence can and should be supported as long as appropriate monitoring and safeguards are put in place to help prevent any serious loss or risk to the adult.

The following stories are offered for committees to consider. They are intended to support committees in fulfilling their responsibility to foster an adult's independence in a way that will work for the adult in his/her unique situation.



Connecting with the community...

John is in his late 40's. He has had multiple traumatic head injuries which have affected his speech, impacted his problem solving skills and over time, his mobility. He now uses a motorized wheelchair to get around in his community. John also lives with mental health issues. He enjoys being active in his community, regularly attends a local church and is proud of his home. Over the years, John has been exploited by others, particularly with respect to his money.

Prior to his accidents John was independent in all aspects of his life. Today, through the daily assistance of community support workers, he lives in his own home. John's brother was recently appointed as his committee in order to finalize a legal settlement related to his injuries. Frustrated and worried that John could be financially exploited, his brother considered only allowing John to be involved in the community when supervised by his support worker.

One of John's favourite spots to visit is a local coffee shop, conveniently located two blocks away from his home. John's brother identified that the coffee shop could be a safe environment that would allow John to remain active in the community. Together John and his brother planned and practiced a safe route for him to navigate the short ride in his wheelchair. John's brother provided the manager of the shop with his contact information in case of any problems. John now drives his wheelchair to the restaurant where staff greet him by name, and he orders his daily latte and something

to eat. His brother loads a gift card with \$50 each week so John doesn't have to worry about carrying cash and can purchase his favourite items with confidence.

This is an example of fostering independence in an appropriate and supportive way without imposing undue restrictions. In this case, it also saves John the extra cost of a support worker for this familiar activity. Debit cards, gift cards and other non cash options can provide opportunities for purchasing items while limiting risk in discrete and respectful ways. They may also provide a record of purchases made with the card, documentation John's brother can use to monitor and account for how John's money is being spent.



Honouring a relationship...

Christina, a 24 year old woman with a developmental disability, recently surprised her family with the news she is engaged to be married.

Christina's parents, who are also her committees, are reluctant to support the idea. They know very little about Christina's fiancé Joe, and are anxious about Joe's intentions and the legal implications marriage would have for Christina.

The committees want to support Christina, but also make sure she understands their concerns. They decided the best approach would be to talk to their daughter about how marriage would change her current situation, and ask if she and Joe had thought about details like setting a date or where they would live. They also invited Joe to dinner to try to get to know him better. Although they are aware their authority does not give them the power to make decisions about whether

Christina can marry, the committees want to do their best to help Christina make an informed choice.

While the committees' protectiveness of their daughter is understandable, the decision to marry is Christina's. As committees, Christina's parents are required to support her in making the decision she feels is best. They can provide her with advice or guidance they feel will be of assistance, but ultimately they must respect Christina's wishes. To support Christina, the committees could encourage her to participate in premarital preparation programs to support success in her relationship. They might also consider legal counsel to determine how best to protect Christina's assets. Supporting and involving Christina facilitates the balancing act of honouring Christina and Joe's relationship with the committees' responsibility to protect her interests.



Finding a balance...

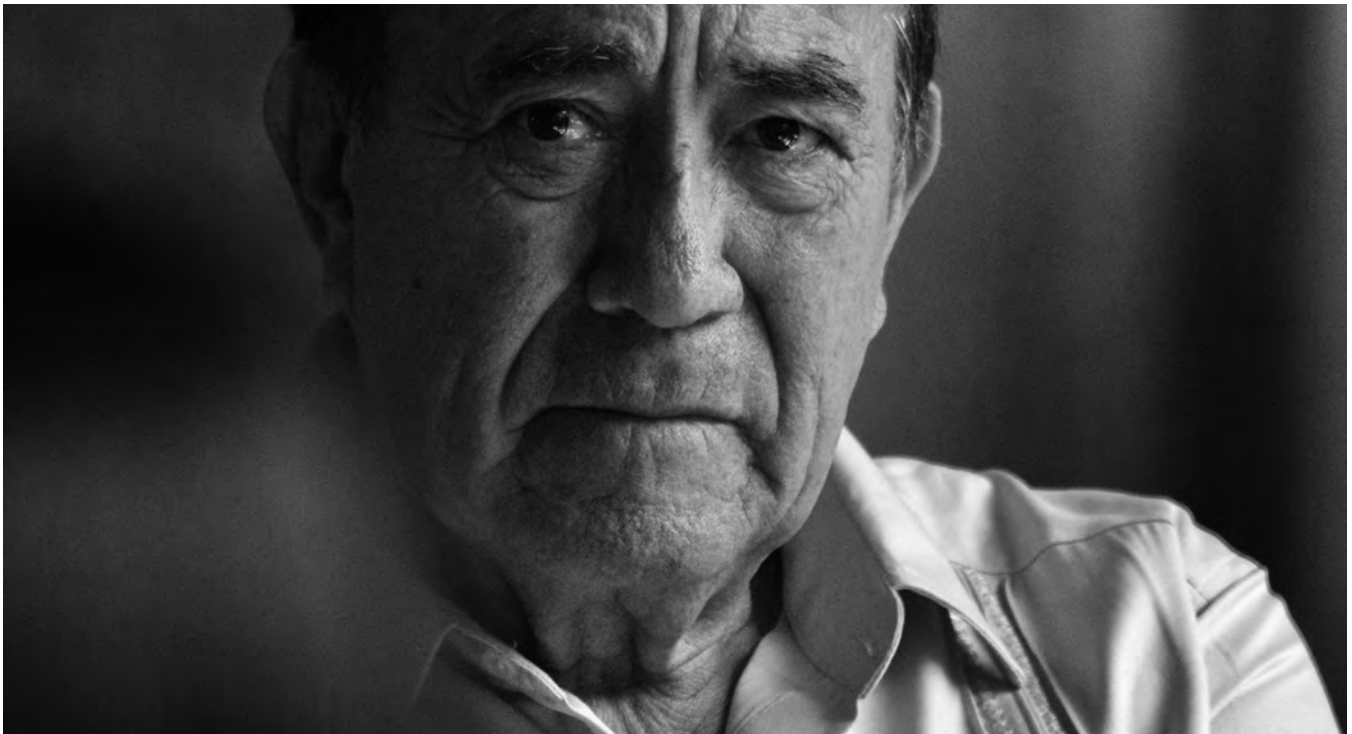
Michael has lived in the same home in a small town in British Columbia since his early twenties. It's where he and his wife raised their family. Although his wife passed away a few years ago and their three children had all long since left home and moved to the city, Michael can't imagine living anywhere else.

Now in his mid 70s, Michael has dementia. James, his eldest son, was appointed committee and has been managing Michael's finances from a distance – paying his bills, filing his taxes, and ensuring Michael had access to enough money to live life as he always had. Michael's neighbours have always kept a close eye on him and have alerted James to any issues, but they were never serious. Sometimes he would forget to mow the lawn or collect his mail, but James would simply deal with it the next time he visited.

Recently, Michael's health has noticeably declined, and James is increasingly alarmed by the problems Michael is having. A neighbour was visiting one morning and noticed the stove had been left on all night and a pot had boiled dry. The last time James visited, Michael asked to go out for bacon and eggs. When James reminded him they had only just finished a big breakfast 20 minutes earlier, Michael laughed it off but it was clear he didn't remember. James wonders what else is going wrong and is worried about leaving his father on his own. He is thinking about selling the house and moving his father into a facility close to the city that could provide

Michael with the assistance he seems to need. It would give James peace of mind that Michael was not at risk, and would also mean he would be able to visit more.

Although it seems James has Michael's best interests at heart, the option James is considering seems to be the best one for James, even though it may not be the best option for Michael. Michael is in the only home he has known for fifty years, and moving would be very disruptive and possibly traumatic. To foster Michael's independence, James should consider whether other options could mitigate the risk of leaving Michael in his home. Has James consulted with Michael's doctor? Can Michael afford in home support? If he cannot live independently, could he afford to keep the home so James could take him back for visits? James should also have a frank discussion with Michael about his living situation and Michael's preferences. Even if he can no longer live in his home, Michael may prefer to move to a facility in his community rather than one near James.



A cautionary tale...

Frank incurred a traumatic brain injury as a result of a motor vehicle accident a few years ago. His injuries were severe and as a result, he was declared incapable and his son was appointed as his committee. The accident resulted in a financial settlement. It provided enough money to support Frank for many years. Frank's son does not live in the same community as his father, so he deposited the settlement funds into his father's bank account, and allowed him to continue using his debit card to access the account for his day to day expenses.

Periodically, Frank's son reviewed the bank statements for any anomalies. One month, he noticed a sizable drop in the account balance. The statement detail showed several \$500 and \$1,000 cash withdrawals, some on the same day. Frank immediately called the bank to put a hold on the account and then called his father to tell him know that it appeared his account had been compromised. He was surprised to learn his father had made the withdrawals. He had spent some of the money himself, and had made several loans to new friends (although he couldn't remember who).

Unfortunately, Frank's son did not fully appreciate his dad's vulnerability. As a result, a significant amount of Frank's settlement money has been used in a short period of time on questionable expenditures through the possible exploitation of Frank's good nature by others.

In this situation, fostering Frank's independence and participation in decision making requires a greater investment of time on the part of the committee as well as some thoughtful interventions to reduce vulnerability. This situation could have been prevented if Frank had a different arrangement with respect to access to his money. In this example, an appropriate safeguard would have been to create a separate bank account for Frank to access with a monthly amount transferred in for his personal use. A prepaid credit card, with a smaller dollar amount loaded onto the card, would also help support Frank's independence without risking his financial exploitation.

Contact the Public Guardian and Trustee

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

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

More Information:

If you have general questions about committeeship, please refer to the Private Committee Services pages at www.trustee.bc.ca, or contact the Private Committee Services department. For further information on safeguards, please consider the Community Living BC website: www.communitylivingbc.ca where you can access their resources. Just go to the “Home” page, look for the tab marked “Resources” and then click on “Safeguards Resources”. This fact sheet is intended as general advice and direction, to help you work effectively and successfully with the PGT. It is not legal advice about your specific situation. If you have general questions, please contact the Private Committee Services department and ask to speak with a Committee Review Officer.