

When the Public Guardian and Trustee Is Committee

Client Information when the PGT is acting as Committee of Estate

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Introduction

When an adult needs help managing their affairs because of mental incapability 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 put money away and forget where it is. The adult may be confused about banking, investments, property, and personal belongings. As a result, the adult becomes vulnerable in our society.

Each year many people contact the Public Guardian and Trustee (PGT) to find out what they can do to help an adult, friend or relative who cannot manage on their own. In most situations, the person contacting the PGT is able to provide the help that is needed. This is important, as the people closest to the adult often provide the best care and compassionate assistance. When there is no one else willing and able to assist, the PGT may have a role in providing assistance to the adult.

This guide explains committee of estate and how the PGT fulfils this role if appointed.

What is a Committee?

When an adult needs assistance in managing their financial and legal affairs, they may have planned ahead and appointed someone else to make decisions through an enduring power of attorney or representation agreement. If these are not in place and someone is needed to assist because the adult is incapable, usually a friend or relative applies to the court to manage the adult's financial affairs. This is known as a "committee of estate" under the *Patients Property Act*. Where there are no family or friends who are willing and able to act as committee, the Public Guardian and Trustee (PGT) may be appointed instead.

What is a committee of estate?

A committee of estate is a person who is appointed to make financial and legal decisions for an adult who is incapable and requires assistance. A committee of estate has many responsibilities including securing assets, confirming eligibility for benefits, receiving income, paying bills, contracting for services, maintaining, purchasing and selling real property, managing investments, preparing tax returns and appropriately providing for legal dependents. Legal responsibilities include acting as litigation guardian on civil law matters. In carrying out these roles, a committee is required to foster the independence of the adult and encourage the adult's involvement in any decision making that affects the adult.

What decisions can a committee of estate not make?

A committee of estate does not make decisions related to health care, facility placement and living arrangements or other personal decisions. Some or all of these decisions may be made by other types of substitute decision makers such as a committee of person under a court order, a representative under a representation agreement or a temporary substitute decision maker for health care. If consent for a health care decision is needed and there is no one else to provide it, the PGT may be authorized to act as a temporary substitute decision maker.

Similarly, if an adult needs a decision about admission to a care facility and there is no one else to provide it the PGT may act as substitute decision maker.

For information about how an adult's personal and health care decisions (including care facility admission decisions) can be made, see **It's Your Choice, Consent to Health Care and Care Facility Admission and the Role of the Public Guardian and Trustee**.

When is a committee needed?

Although an adult may not be capable of managing their own financial and legal affairs, they may still be capable of making some decisions. The decision as to whether an adult is capable of managing their financial and legal affairs is a legal one, based on an assessment that determines whether the adult has the mental capability to understand the impact of decisions that must be made. Appointment as committee of estate is a last resort and is only considered after all other options, such as pension trusteeship, representation agreement or enduring power of attorney, have been exhausted. See **It's Your Choice** and **Options to Consider** for more information.

When acting as committee of estate, the PGT strives to provide the level of help the adult needs, to involve the adult in decision making, and to foster independence. An adult's wishes and past practices are taken into consideration when the PGT carries out its fiduciary duties. Each adult's situation is unique.

Who can be a committee?

If a committee is required, a friend, family member or trust company can apply to the court to become a committee so that they can manage the affairs of a person who needs help. This is known as a “private committee.” If you have someone who needs help and you are interested in becoming a private committee, please see our **Private Committee Handbook** and **How You Can Help.**”

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 committee and a neutral party is preferred to take on the role. The PGT is independent of government in client related decision making and has a duty of undivided loyalty to the client.

How is a committee of estate appointed?

A committee of estate can be appointed in one of two ways:

- (a) **By the court:** Any person or the PGT can apply to court to be appointed committee of estate under the *Patients Property Act*. The court will consider the opinions of two doctors, who have met with and examined the adult, and other relevant information.
- (b) **By a certificate of incapability:** A certificate of incapability may be issued by a health authority after an assessment of incapability of the adult has been conducted. The assessment includes both medical and functional components and must meet legislative standards. This process appoints the PGT as “statutory property guardian” under the *Adult Guardianship Act*. Once appointed, the PGT becomes the committee of estate under the *Patients Property Act*. Only the PGT can be appointed this way.

The rest of this guide is about how the PGT fulfills its role primarily appointed through the certificate of incapability process.

What Does the PGT Do as Committee of Estate?

When the Public Guardian and Trustee (PGT) is appointed committee of estate (usually through the certificate of incapability process) to manage an adult’s financial affairs, the adult becomes a client of the PGT. The PGT, like any other committee of estate, has a duty to protect the client’s property and has authority to deal with all of the client’s property. All property continues to belong to the client and is held in trust in the client’s name.

The PGT duty as committee is to manage the assets for the benefit of the client and the client’s legal dependent(s). All actions and decisions made by the PGT must be for the benefit of the client and accordingly the PGT takes the client’s personal

circumstances and unique family situation into account in making decisions on behalf of the client. The PGT is guided by the principles of the *Adult Guardianship Act*, and the duty to foster the client’s independence and involve the client in decision making, to the greatest extent possible. The PGT will involve the client, and/or impacted or involved family and friends, where appropriate, in making decisions.

Each client’s financial and legal affairs are administered on an individual basis to serve the client’s best interests. A Client Service Team, which includes a case manager and staff with financial and legal expertise, manages the client’s finances and legal matters.

Committee of estate CAN make decisions about:

Securing assets

Applying for benefits

Receiving income

Paying bills

Contracting for services

Maintaining, purchasing, and selling real estate

Managing investments

Preparing tax returns

Appropriately providing for legal dependents

Committee of estate CANNOT make decisions about:

Health care

Personal decisions

Placement and living arrangements

Marriage or divorce*

Adoption*

Voting*

Executing a will*

Criminal proceedings*

Immigration matters*

*No substitute decision maker can make decisions on these matters.

Involving the client and family

As committee, the PGT supports and promotes a client's independence and involves the client where possible in key decision making. The case manager will meet with the client to identify needs, priorities, the level of participation and to develop a plan. If assets are secure and the client is able, the PGT will minimize its involvement in day to day decisions such as grocery shopping and entertainment. Many clients still maintain and use their own bank account.

The PGT involves the client and impacted family in major financial and legal decisions. The level of involvement will depend on things such as the client's wishes, past practices, the client's ability to understand, the interest and availability of family, the urgency of the situation and confidentiality.

In situations where there are financial decisions that may impact personal or health care decisions, the PGT works collaboratively with the client and/or others who have legal authority, such as a client's committee of person or representative for personal and health care, to ensure that decisions made are in the best interest of the client.

Patients Property Act, s. 18(2)

A committee must, to the extent reasonable, foster the independence of the patient and encourage the patient's involvement in any decision making that affects the patient.

Getting started

On being appointed as committee of estate, the PGT will contact the client and inform the client of the activities that will follow. A new client can expect the PGT to do the following:

- Inform them about options for second assessments or reassessments;
- Foster independence and encourage involvement of the client in decision making;
- Organize an initial client visit;
- Gather information from family, friends and financial institutions;
- Contact financial institutions about the PGT authority as committee of estate;
- Request PGT inspectors to inspect the client's residence/property;
- Make an inventory and secure assets;
- Dispose of personal effects/real property, where appropriate;
- Conduct a search for a will;
- Deal with any legal issues;
- Develop a case plan and budget;
- Redirect mail and arrange for a change of address, where required; and
- Redirect income and bills and arrange for automatic payments.

Gathering information

The PGT works to gather as much information as possible about a client's affairs in order to get a full picture of the client's financial situation. In many cases, the client is not able to fully describe their assets, income, debts and other responsibilities.

Wherever possible, the PGT gathers information from various sources. 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. A questionnaire is sent to involved relatives and friends and these responses greatly assist in managing the client's affairs, particularly when they

are submitted promptly. 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 the best service and to enhance the client's quality of life to the greatest extent possible.

For a period of time, the client's mail will also be redirected to the PGT in order to assist in identifying income, assets and liabilities that need to be managed. All personal mail will be forwarded to the client.

The PGT is committed to maintaining the confidentiality and security of client information and the collection, use and disclosure of personal information must comply with BC legislation. Information is only shared with others when it is in the best interest of the client. This may mean that some financial or other information may be shared with people such as health care providers or involved family if it is necessary to provide support to the client, or for the PGT to carry out its duties. The client's wishes and situation are always taken into consideration.

Collecting income and paying bills

The PGT will collect income on behalf of the client. For example, the PGT may collect wages, pensions, disability payments, Worksafe BC payments, annuities, mortgage and agreement for sale payments, investment income, rents and gifts under a will.

The PGT also ensures any bills or expenses are paid on the client's behalf. Where the client is able to manage some day to day expenses, funds will be made available to the client's bank account to cover expenses such as groceries, transportation and entertainment. If the client is in a care facility, the PGT pays the residential care user fees and provides additional money for small purchases if the client can afford this.

If the client's dependents are in need, the client's assets may be used to assist them, depending on the type and amount of assistance, the

wishes and needs of the client, and their legal obligation to assist the family member.

If the client does not have money to cover their own living expenses, the PGT will apply for income assistance, or other applicable benefits, on the client's behalf.

Where there are debts or other liabilities, and the client has sufficient funds, the PGT will arrange for repayment or settle the claims on the client's behalf.

Managing the assets

When someone becomes a client of the PGT, the PGT establishes a trust account for the client. This is where the client's cash is invested, income is credited, and bills are paid. The PGT will safeguard or sell other assets, depending on the type of asset and the circumstances of each client. 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.

- **Bank Accounts:** Where possible, arrangements are made so a client can continue to access their 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 Accounts:** 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.
- **Joint Spousal Assets:** When the client has joint assets with a spouse, the PGT will work with the

spouse about issues such as taxes, real estate, insurance and pension splitting options.

- **Other Joint Assets:** When the client has joint assets with someone else, the PGT will work with the person on issues such as taxes, real estate, and insurance.
- **Cash:** All liquidated assets are held in the trust account or investment accounts 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:** Stocks and bonds may be sold if the client requires liquid assets. 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. Efforts are made to avoid penalties for withdrawal.
- **Furniture and Other Personal Belongings:** If the client is likely to continue living on their own, furnishings and other belongings will be left with the client. If the client does not require their furniture and other belongings because they are not living independently, these items may be stored 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 the client's trust account.
- **Memorabilia:** All efforts are made to preserve or store a client's memorabilia, such as photos and family mementos.
- **Managing Real Estate:** If the client continues to live at home or is likely to return home, every effort will be made to preserve the client's 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. The PGT engages a property management company to maintain the property, complete repairs, conduct inspections, and winterize the home.

- **Selling Real Estate:** If the client will not likely use the property again, or cannot afford to cover property management expenses, the property 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, and 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. If a client does not drive or benefit from the use of their vehicle, the PGT will sell the vehicle.

Fees and expenses

The PGT charges fees for committee of estate services: managing assets, managing income, paying expenses, securing assets, conducting banking, investing and budgeting. A detailed description of fees can be found at www.trustee.bc.ca/fees.

The client is also responsible for expenses related to goods or professional services provided to the client such as the services of real estate agents, property management services, home repairs, property taxes, preparation of tax returns, legal services and asset storage, protection and maintenance.

Ending the PGT Role as Committee of Estate

A committee continues to act until an assessment determines the client is capable, the client dies, the court ends the committee, or someone else is appointed by the court.

When the PGT's role as committee of estate ends, because a client is capable, PGT staff will provide clients with their financial information, status of any existing legal matters, priority issues, and helpful community resources and contacts to ensure a smooth and successful transition to independent living. When the PGT ends its role as committee of estate, all assets are returned to the client.

The steps required to end a committee depends on whether the PGT was appointed by a certificate of incapability or a court order.

(a) Committee by court order: When the PGT is appointed committee by the court, a new court order is required to end the committee. This is the case for all committees appointed by the court. The only way to end a court ordered committee is for the court to find that the client is capable. The assistance of a lawyer is usually necessary to bring an application for a declaration of capability before the court. The client will be responsible for any legal fees charged. Where the PGT is committee, the client's case manager can help coordinate this process.

(b) Committee by Certificate of Incapability: When the PGT is committee of estate by a certificate of incapability, the committee can be ended when:

- The client is determined to be capable following a second assessment or reassessment of incapability;
- The PGT is no longer needed. For example, informal options may be sufficient to address concerns or a trusted person may be able to assist;
- The court ends the committee; or
- The court appoints a new committee.

Reassessments

Clients can request a reassessment of capability by speaking to PGT staff who can explain the steps required and assist with the process for requesting a reassessment. The client may also speak directly with their doctor. The client may be required to pay the cost of a reassessment.

In addition to requesting a reassessment, the client may consult a lawyer about options or to request to challenge a certificate of incapability or court order. The client will be responsible for any legal fees that are charged. The client's case manager can provide a list of resources for legal services. For more information about client rights see page 11 of this publication.

When a client becomes capable or the PGT is no longer needed

The PGT will transfer all of the client's assets to the client and assist the client with the transition to independent living. The client can expect the PGT to:

- Inform parties of the end of the PGT authority as committee of estate;
- Promptly return all assets;
- Redirect income and bill payments back to the client to manage;
- Provide information on finances, priority issues, any existing legal matters, and community resources;
- Answer any questions;
- Assist in creating a smooth transition for the client to independent living.

When a committee is replaced

The PGT or a private committee can be replaced if a court order is made appointing a new committee. If someone would like to become committee for a PGT client, that person can apply to court to be appointed. If appointed, the PGT will transfer responsibility for the client's affairs to the new private committee.

The PGT will assist the private committee in understanding their legal duties and will provide the client's financial information, status of any existing legal matters, priority issues, and helpful community resources and contacts to ensure a smooth and successful transition to the private committee.

If at any time the private committee cannot act (for example, if the private committee dies or his/her authority is rescinded) the PGT becomes the default committee until a new committee is appointed.

When a Client Dies

If a client dies while the Public Guardian and Trustee (PGT) is committee of estate, all of the client's assets become part of the client's estate. The client's will, or the provincial intestacy rules if the client dies without a will, determine how the assets are distributed. Assets are transferred to the client's executor or administrator who is responsible for distributing the estate assets to the deceased's beneficiaries or intestate successors. Until the assets are transferred, the PGT will safeguard the assets and continue to collect the client's income.

Initial steps

PGT staff will:

- obtain a death certificate;
- notify all income sources, creditors and Canada Revenue Agency;
- attempt to locate the executor or next of kin qualified to administer the estate;
- provide information on estate assets to the executor or next of kin to make an application to the court to administer the estate;
- review PGT management of the client's finances, including a fee review.

Funeral arrangements

A client's family members are encouraged to consult with the PGT case manager when making funeral arrangements. When there is no executor or family member, the case manager may make funeral arrangements.

Transfer of estate

The PGT requires a copy of the representation grant issued by the court which authorizes the executor or administrator to receive the estate funds. The PGT requests that a release be signed by the executor or administrator. For low asset estates, a representation grant may not be required. Speak to PGT staff for more information.

PGT legal authority during transition

The PGT continues with the authority as committee of estate even after the death of a client until a representation grant is issued appointing an executor or administrator. However, the exercise of this authority is limited. During this period, the Estate Liaison department conducts the day to day management associated with maintaining and preserving the estate's assets.

When an executor or next of kin cannot be located

The PGT Estate and Personal Trust Services administers estates of persons in BC who die with or without a will when an executor, family member or other eligible person either does not wish to or is unable to carry out the administration of the estate. When a client dies while the PGT is committee, the Estate Liaison department will either refer the estate to Estate and Personal Trust Services or to the BC Unclaimed Property Society. If client assets have been transferred to the BC Unclaimed Property Society, a claimant should contact them directly at toll free at 1.888.662.2877 or info@bcunclaimedproperty.bc.ca.

Client Rights Information

When the Public Guardian and Trustee (PGT) is appointed committee of estate, the PGT is authorized to manage financial and legal affairs on behalf of a client. The publication **When the PGT is Committee** gives detailed information about how we assist our clients and manage different assets. This information sheet gives some information about client rights.

Rights Information

As of December 1, 2014, some changes to BC adult guardianship laws were introduced. When the PGT is appointed committee of estate through a certificate of incapability, the adult has the right to a second assessment, reassessment and court review.

- **Second assessment:** Within 40 days after the PGT notifies the adult that the PGT is appointed committee of estate, the adult, or a person acting on behalf of the adult, may request a second assessment.
- **Reassessments:** The adult has the right to request a reassessment every 12 months. The case manager will assist in coordinating the assessment or the adult may speak directly with their doctor.
- **Court review:** Following a second assessment or reassessment, the adult has the right to apply to the court for a review of the determination.

How do I get a copy of my assessment?

You have a right to obtain your personal information. Speak to your case manager about getting a copy of your assessment or other records in your file.

How can I challenge a decision that I am incapable?

In addition to requesting a second assessment or reassessment, you may consult a lawyer about options or to assist you in challenging a certificate of incapability or court order. You will be responsible for any legal fees that are charged. There are different ways to get legal assistance, including free legal information, legal advice or legal representation in court. Please see your case manager for a list of these resources.

How do I request a reassessment of my capability?

You can speak to your case manager who can explain the steps required and assist you with the process for requesting a reassessment. You may also speak directly to your doctor. You may be required to pay the cost of a reassessment.

How do I get declared capable of managing my own affairs?

The steps required depend on how the PGT was appointed – by court order or by certificate of incapability. See page 8 of “**When the PGT is Committee**” for more details.

How do I make a complaint about the PGT services or decisions?

The PGT has an internal process for making complaints. Ask your case manager for more information or visit our website at www.trustee.bc.ca/Pages/feedback.aspx. If you are not satisfied with the PGT response to your complaint, you may direct your concerns to the BC Ombudsperson by calling 1.800.567.3247 or by visiting www.bcombudsperson.ca.

Contact the Public Guardian and Trustee

Greater Vancouver Regional Office

700–808 West Hastings Street
Vancouver, BC V6C 3L3

PHONE **604 775 1001**
FAX **604 660 9498**
EMAIL **STA@trustee.bc.ca**

Interior–North Regional Office

1345 St. Paul Street
Kelowna, BC V1Y 2E2

PHONE **250 712 7576**
FAX **250 712 7578**
EMAIL **STA@trustee.bc.ca**

Vancouver Island Regional Office

1215 Broad Street
Victoria, BC V8W 2A4

PHONE **250 356 8160**
FAX **250 356 7442**
EMAIL **STA@trustee.bc.ca**

Toll free calling

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.

VANCOUVER	604 660 2421
VICTORIA	250 387 6121
OTHER AREAS IN BC	1 800 663 7867
EMAIL	mail@trustee.bc.ca
WEBSITE	www.trustee.bc.ca

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

Important Note:

This information for When the Public Guardian and Trustee is Committee is provided by the Public Guardian and Trustee of British Columbia. It is general information and is not legal advice nor is it a substitute for legal advice. If you need legal advice about these laws, contact a lawyer or notary or your local community law office.