

An Introduction to Adult Guardianship in British Columbia

In British Columbia every adult 19 years of age and older is presumed to be capable of making their own decisions unless the contrary is demonstrated. Decision making by adults may be impaired by a variety of medical circumstances such as developmental disabilities, brain injuries or dementia. Having an adult guardianship framework in place is important to protect the interests of vulnerable adults who are incapable of making decisions on their own. In BC, the adult guardianship framework is a package of six laws that provide tools for adults to plan ahead for their legal, financial, health and personal care or to be protected if they are unable to plan ahead. These laws are designed to ensure that the wishes of adults will be heard if they are incapable of making their wishes known. BC adult guardianship laws follow these guiding principles:

- All adults are entitled to live in the manner they wish and to accept or refuse support, assistance or protection as long as they are capable of making decisions about those matters.
- All adults should receive the most effective, but the least intrusive form of support, assistance or protection when they are unable to care for themselves or their financial affairs.

- All adults are presumed to be capable of making decisions about their personal care, health care and financial affairs until the contrary is demonstrated.
- An adult's way of communicating with others is not grounds for deciding that they are incapable of making decisions.
- The court should not be asked to appoint and should not appoint a guardian (known as a committee in BC) unless alternatives such as providing support and assistance have been tried or carefully considered.
- If a committee has been appointed, the committee must foster the adult's independence and involvement in decision making.

These laws form a continuum of decision making:

1. Adults make their own decisions

Adults have a right to make their own decisions as long as they do not harm others or themselves and are mentally capable. They are presumed to be mentally capable until the contrary is demonstrated.

2. Adults can identify in advance, those they trust to make decisions for them if they are ever unable to make their own decisions due to mental incapability.

They can do this by making:

- an enduring power of attorney for financial matters,
- a section 9 representation agreement for personal and health care matters that may include care facility admission and/or end of life decision making,
- a section 7 representation agreement for routine financial and legal management and personal and/or health care matters, or
- an advance directive that does not name a specific decision maker for health care instructions.

They can also nominate someone to be committee if that is ever required.

3. There are ways for others to become an adult's committee if needed because the adult is mentally incapable of making decisions that need to be made.

Trusted family or friends may be appointed committee of estate for financial and legal matters by a court order or the Public Guardian and Trustee may be appointed as committee of estate by a certificate issued by a health authority. A committee of person for personal and health care matters can only be appointed by a court order.

4. There are some fall backs if adults do not plan ahead or their plans fall through for some reason.

There is a legislated process for non emergency health care decisions to be made and for a response by health authorities or Community Living BC and the Public Guardian and Trustee if adults are experiencing abuse, neglect or self neglect and are unable to seek support and assistance on their own due to vulnerability/incapability.

BC's adult guardianship laws are designed to work together to ensure that financial, legal and personal and health care decisions can be made by, with, or for adults when needed, including if or when adults become mentally incapable. These six adult guardianship laws are the following:

- **Representation Agreement Act** – enables the making of representation agreements by adults that identify one or more representatives to make personal and health care and/or routine financial and legal decisions; Representation agreements include section 9 agreements for personal and health care matters including care facility admission and/or end of life decision making and section 7 agreements for routine financial and legal management and personal and health care matters.
- **Power of Attorney Act** – enables the making of enduring powers of attorney by adults that identify one or more attorneys to make financial and legal decisions if a time comes that the adult cannot manage their financial affairs.
- **Health Care (Consent) & Care Facility (Admission) Act** – Part 2 outlines how health care decisions will be made, and by who, and enables the making of advance directives. Part 3 outlines the process for admission to a care facility, how the decision will be made and by who.
- **Adult Guardianship Act** – Part 2.1 outlines the process by which health authorities issue certificates of incapability as a last resort, resulting in the Public Guardian and Trustee becoming an adult's committee of estate for financial and legal matters. Part 3 outlines BC's response to adult abuse, neglect and self neglect by designated agencies.

- **Public Guardian and Trustee Act** – outlines the powers and duties of the Public Guardian and Trustee in protecting vulnerable British Columbians. For adults, these powers include the ability to investigate allegations of possible financial mismanagement including by those acting as an adult’s substitute decision maker (trustee, representative, attorney, committee) and restrict access to assets in high risk situations.
- **Patients Property Act** – outlines the process by which the court can make a committee order naming a trusted other as a committee of estate and/or person. This Act would be repealed if the court ordered guardianship provisions of Part 2 of the Adult Guardianship Act are brought into force.

Adults and their families and support networks are at the centre of the BC adult guardianship framework. The framework also provides for the potential involvement as needed of health practitioners, hospitals, health authorities, the legal community, police, financial institutions and the Public Guardian and Trustee.

Further information is available on the Public Guardian and Trustee website - www.trustee.bc.ca. The following brochures may be of particular interest:

- **It’s Your Choice Personal Planning Tools**
- **When the Public Guardian and Trustee is Committee**
- **Consent to Health Care**
- **Care Facility Admission and the Role of the PGT**
- **Protecting Adults from Abuse, Neglect and Self Neglect**
- **Options to Consider When an Individual has Difficulties Managing Their Financial, Legal or Personal Affairs**
- **Fostering Independence and Decision Making**

Contact the Public Guardian and Trustee

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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 introduction to Adult Guardianship in British Columbia is provided by the Public Guardian and Trustee. 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 or making these documents, contact a notary or lawyer or your local community law office.