

## APPENDIX D - LEGISLATION

The following legislation is included:

- *Adult Guardianship Act (AGA)*
- *Statutory Property Guardianship Regulation (SPG Regulation)*
- *Patients Property Act (PPA)*



*Adult Guardianship Act (AGA)*

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*[This is an unofficial consolidation of the Adult Guardianship Act, prepared November 24, 2014 for convenience only. This consolidation includes all amendments in force as of that date and reflects how the Act will read on December 1, 2014, the date on which B.C. Reg. 25/2014 brings into force amendments to the Act and specified provisions of the Act.]*

## **ADULT GUARDIANSHIP ACT**

### **CHAPTER 6**

*[Updated to December 1, 2014]*

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**PART 1 – INTRODUCTORY PROVISIONS**

**Definitions**

**1** In this Act:

“**abuse**” means the deliberate mistreatment of an adult that causes the adult

- (a) physical, mental or emotional harm, or
- (b) damage or loss in respect of the adult’s financial affairs,

and includes intimidation, humiliation, physical assault, sexual assault, overmedication, withholding needed medication, censoring mail, invasion or denial of privacy or denial of access to visitors;

“**adult**” means anyone who has reached 19 years of age and, for all purposes incidental to an application under section 6 (2), includes a person who has reached 18 years of age;

“**attorney**” means a person authorized by a power of attorney or enduring power of attorney to make decisions on behalf of another;

“**care facility**” has the same meaning as in the *Health Care (Consent) and Care Facility (Admission) Act*;

“**court**” means

- (a) in this Part and Parts 2 and 2.1, the Supreme Court,
- (b) in Part 3, the Provincial Court, and
- (c) in Part 4, the Supreme Court or the Provincial Court;

“**designated agency**” means

- (a) [Repealed 2007-34-1.]
- (b) in Part 3, a public body, organization or person designated under section 61 (a.1) for the purposes of that Part, and
- (c) in Part 4, a public body, organization or person referred to in paragraph (a) or (b);

- “**enduring power of attorney**” means a power of attorney made under Part 2 of the *Power of Attorney Act*;
- “**financial affairs**” includes an adult’s business and property, and the conduct of the adult’s legal affairs;
- “**health authority designate**” means any person designated by a prescribed body as having authority to issue a certificate of incapability under section 32;
- “**health care**” has the same meaning as in the *Health Care (Consent) and Care Facility (Admission) Act*;
- “**health care provider**” means a person who is licensed, certified or registered under a prescribed Act to provide health care;
- “**near relative**” means an adult child, a parent, an adult brother or sister, a grandparent or any other adult relation by birth or adoption;
- “**neglect**” means any failure to provide necessary care, assistance, guidance or attention to an adult that causes, or is reasonably likely to cause within a short period of time, the adult serious physical, mental or emotional harm or substantial damage or loss in respect of the adult’s financial affairs, and includes self neglect;
- “**power of attorney**” means a power of attorney other than an enduring power of attorney;
- “**qualified health care provider**” means a medical practitioner or a member of a prescribed class of health care providers;
- “**representation agreement**” means an agreement made under the *Representation Agreement Act*;
- “**representative**” means a person authorized by a representation agreement to make decisions on behalf of another;
- “**self-neglect**” means any failure of an adult to take care of himself or herself that causes, or is reasonably likely to cause within a short period of time, serious physical or mental harm or substantial damage or loss in respect of the adult’s financial affairs, and includes
- (a) living in grossly unsanitary conditions,
  - (b) suffering from an untreated illness, disease or injury,
  - (c) suffering from malnutrition to such an extent that, without intervention, the adult’s physical or mental health is likely to be severely impaired,
  - (d) creating a hazardous situation that will likely cause serious physical harm to the adult or others or cause substantial damage to or loss of property, and
  - (e) suffering from an illness, disease or injury that results in the adult dealing with his or her financial affairs in a manner that is likely to cause substantial damage or loss in respect of those financial affairs;

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“**spouse**” means a person who

- (a) is married to another person, and is not living separate and apart, within the meaning of the *Divorce Act* (Canada), from the other person, or
- (b) is living with another person in a marriage-like relationship;

“**statutory property guardian**” means a person who, under Part 2.1, may make decisions regarding an adult’s financial affairs.

**Guiding principles**

- 2 This Act is to be administered and interpreted in accordance with the following principles:
- (a) all adults are entitled to live in the manner they wish and to accept or refuse support, assistance or protection as long as they do not harm others and they are capable of making decisions about those matters;
  - (b) all adults should receive the most effective, but the least restrictive and intrusive, form of support, assistance or protection when they are unable to care for themselves or their financial affairs;
  - (c) the court should not be asked to appoint, and should not appoint, guardians unless alternatives, such as the provision of support and assistance, have been tried or carefully considered.

**Presumption of capability**

- 3 (1) Until the contrary is demonstrated, every adult is presumed to be capable of making decisions about the adult’s personal care, health care and financial affairs.
- (2) An adult’s way of communicating with others is not grounds for deciding that he or she is incapable of making decisions about anything referred to in subsection (1).

**PART 2**

**4 to 31** [Not in force.]

**PART 2.1 – STATUTORY PROPERTY GUARDIANS**

**Obtaining a statutory property guardian**

- 32 (1) If a person has reason to believe that an adult may be incapable of managing the adult’s financial affairs, the person may
- (a) if the person is a health care provider, request a qualified health care provider to assess the adult’s incapability, or
  - (b) in any case, notify the Public Guardian and Trustee of the person’s belief, and the Public Guardian and Trustee may request a qualified health care provider to assess the adult’s incapability.

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- (2) If, after assessing the adult according to prescribed procedures, the qualified health care provider determines that the adult is incapable of managing that adult's financial affairs, the qualified health care provider may, using the prescribed form, report the adult's incapability to a health authority designate.
- (3) If a health authority designate receives a report under subsection (2) of an adult's incapability, the health authority designate may issue a certificate of incapability in respect of the adult, if satisfied that, based on the report and any additional information the designate receives,
- (a) the adult needs to make decisions about the adult's financial affairs,
  - (b) the adult is incapable of making those decisions,
  - (c) the adult needs, and will benefit from, the assistance and protection of a statutory property guardian,
  - (d) the needs of the adult would not be sufficiently met by alternative means of assistance, and
  - (e) either
    - (i) the adult has not granted power over all of the adult's financial affairs to an attorney under an enduring power of attorney, or
    - (ii) an attorney has been granted power as described in subparagraph (i) but is not complying with the attorney's duties under the *Power of Attorney Act* or the enduring power of attorney, as applicable.
- (3.1) A health authority designate must not issue a certificate of incapability unless the health authority designate has first
- (a) consulted with the Public Guardian and Trustee,
  - (b) notified the adult and, if contact information is known to the health authority designate, the adult's spouse or a near relative of the adult of the intention to issue the certificate and the reasons for issuing it, and
  - (c) given each person who received notice under paragraph (b) a reasonable opportunity to respond.
- (3.2) Despite subsection (3.1) (b), notification need not be given to the adult, to another person referred to in that subsection, or to either the adult or another person referred to in that subsection, if the health authority designate has reason to believe that notification may result in
- (a) serious physical or mental harm to the adult, or
  - (b) significant damage or loss to the adult's property.
- (4) If the health authority designate issues a certificate of incapability, the health authority designate must do all of the following:
- (a) forward the certificate to the Public Guardian and Trustee;
  - (b) advise the adult and, if contact information is known to the health authority designate, the adult's spouse or a near relative of the adult that a certificate

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of incapability in respect of the adult has been issued, and provide each of them with a copy of the certificate.

- (5) The Public Guardian and Trustee is the adult's statutory property guardian as of the date on which the certificate of incapability was signed by the health authority designate who issued it.
- (6) [Repealed 2014-9-1.]
- (7) This section does not apply if the adult has a committee, appointed under the *Patients Property Act*, responsible for managing the adult's affairs.

**When Public Guardian and Trustee becomes statutory property guardian**

- 33**
- (1) [Not in force.]
  - (2) On becoming an adult's statutory property guardian, the Public Guardian and Trustee
    - (a) [Not in force.]
    - (b) must advise the adult, and, if contact information is known to the Public Guardian and Trustee, the adult's spouse or a near relative of the adult, that
      - (i) the Public Guardian and Trustee is the adult's statutory property guardian and may make decisions respecting the adult's financial affairs, and
      - (ii) the adult has the rights described in subsection (3).
  - (3) On being advised that the Public Guardian and Trustee is an adult's statutory property guardian,
    - (a) the adult, or a person acting on behalf of the adult, may request, within the prescribed time, a second assessment of the adult's incapability conducted by a qualified health care provider in accordance with prescribed assessment procedures, and
    - (b) if, following the second assessment, a qualified health care provider determines that the adult is incapable of managing that adult's financial affairs, the adult, or a person acting on behalf of the adult, may apply to the court under section 35 for a review of the determination.

**When adult must be reassessed**

- 34**
- The incapability of an adult who has a statutory property guardian must be reassessed by a qualified health care provider, in accordance with prescribed assessment procedures, if
- (a) [Not in force.]
  - (b) the adult's statutory property guardian informs the body that designated the health authority designate who issued the certificate of incapability that a reassessment should occur,



- (c) the adult requests a reassessment and has not been reassessed within the preceding 12 months, or
- (d) the court orders that a reassessment occur under section 35 (3).

**Court review of finding of incapability**

- 35**
- (1) If an adult has been determined to be incapable of managing the adult's financial affairs under section 33 (3) or 34, the adult may apply to the court for a review of that determination.
  - (2) The following are parties to a review under this section:
    - (a) the adult who has been determined to be incapable;
    - (b) the body that designated the health authority designate who issued the certificate of incapability;
    - (c) if ordered by the court, a person appointed, under the *Patients Property Act*, as committee for the adult following a declaration under that Act that the adult is incapable of managing himself or herself.
  - (3) The court may order the adult to attend at the time and place the court directs and submit to an assessment of incapability conducted by a qualified health care provider in accordance with prescribed assessment procedures.
  - (4) The court may
    - (a) confirm the determination of incapability, or
    - (b) reject the determination of incapability and order that the statutory property guardianship is ended.

**36** [Not in force.]

**When authority ends**

- 37**
- (1) and (2) [Not in force.]
  - (3) Statutory property guardianship ends if
    - (a) the Public Guardian and Trustee is the statutory property guardian and the Public Guardian and Trustee
      - (i) is satisfied that the adult no longer needs a statutory property guardian, and
      - (ii) has provided notice to the adult that the adult no longer has a statutory property guardian,
    - (b) following a second assessment under section 33 (3), or a reassessment under section 34,
      - (i) a qualified health care provider determines that the adult is capable of managing the adult's financial affairs and notifies a health authority designate of the determination, and

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- (ii) the health authority designate accepts the determination of capability and notifies the Public Guardian and Trustee of the determination,
  - (c) the court ends the statutory property guardianship under section 35, or
  - (d) the court appoints, under the *Patients Property Act*, a committee responsible for managing the adult's affairs.
- (4) If statutory property guardianship ends under subsection (3), the certificate of incapability issued under section 32 is cancelled.

**38** and **39** [Not in force.]

**40** to **43** [Not in force. Repealed 2006-33-2.]

### **PART 3 – SUPPORT AND ASSISTANCE FOR ABUSED AND NEGLECTED ADULTS**

#### **Purpose of this Part**

- 44** The purpose of this Part is to provide for support and assistance for adults who are abused or neglected and who are unable to seek support and assistance because of
- (a) physical restraint,
  - (b) a physical handicap that limits their ability to seek help, or
  - (c) an illness, disease, injury or other condition that affects their ability to make decisions about the abuse or neglect.

#### **Definition**

- 44.1** In this Part, “**guardian**” includes a committee under the *Patients Property Act*.

#### **Application of this Part**

- 45** (1) This Part applies whether an adult is abused or neglected in a public place, in the adult's home, a relative's home, a care facility or any other place except a correctional centre.
- (2) This Part does not
- (a) override the rights in section 4 of the *Health Care (Consent) and Care Facility (Admission) Act*, or
  - (b) prevent an adult's representative or guardian from refusing health care for the adult in accordance with wishes the adult expressed while capable, even if the refusal will result in the adult's death.

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**Reporting abuse or neglect**

- 46** (1) Anyone who has information indicating that an adult
- (a) is abused or neglected, and
  - (b) is unable, for any of the reasons mentioned in section 44, to seek support and assistance,
- may report the circumstances to a designated agency.
- (2) Despite the *Freedom of Information and Protection of Privacy Act* and the *Personal Information Protection Act*, a person must not disclose or be compelled to disclose the identity of a person who makes a report under this section.
- (3) No action for damages may be brought against a person for making a report under this section or for assisting in an investigation under this Part, unless the person made the report falsely and maliciously.
- (4) A person must not
- (a) refuse to employ or refuse to continue to employ a person,
  - (b) threaten dismissal or otherwise threaten a person,
  - (c) discriminate against a person with respect to employment or a term or condition of employment or membership in a profession or trade union, or
  - (d) intimidate, coerce, discipline or impose a pecuniary or other penalty on a person
- because the person makes a report or assists in an investigation under this Part.
- (5) In subsection (4), “**discipline**” includes
- (a) a refusal to issue or renew a licence or certificate to practise a profession or trade, and
  - (b) a denial or cancellation of permission to practise in a hospital or a refusal to renew that permission.

**Determining if the adult needs support and assistance**

- 47** (1) A designated agency must determine whether an adult needs support and assistance if the agency
- (a) receives a report under section 46,
  - (b) has reason to believe that an adult is abused or neglected, or
  - (c) receives a report that the adult’s representative, guardian or monitor has been hindered from visiting or speaking with the adult.
- (2) If the designated agency determines that the adult does not need support and assistance, the designated agency
- (a) must take no further action, and
  - (b) may advise the Public Guardian and Trustee.

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- (3) If the designated agency determines that the adult needs support and assistance, the designated agency may do one or more of the following:
- (a) refer the adult to available health care, social, legal, accommodation or other services;
  - (b) assist the adult in obtaining those services;
  - (c) inform the Public Guardian and Trustee;
  - (d) investigate to determine if the adult is abused or neglected and is unable, for any of the reasons mentioned in section 44, to seek support and assistance.

**Power to investigate**

- 48** (1) In conducting an investigation described in section 47 (3) (d), a designated agency must make every reasonable effort to interview the adult.
- (2) In addition, the designated agency may
- (a) interview the adult's spouse, the adult's near relatives, the adult's friends or anyone else who may assist in the investigation, and
  - (b) obtain any information that the circumstances require, including a report from
    - (i) a health care provider who has examined the adult,
    - (ii) any agency that provides or has provided health or social services to the adult, and
    - (iii) any person that manages the adult's financial affairs.
- (3) Section 62 applies to information referred to in subsection (2) (b).

**Power to enter to investigate**

- 49** (1) A designated agency that is conducting an investigation described in section 47 (3) (d) may apply to the court for an order under subsection (2) if someone from the designated agency
- (a) believes it is necessary to enter any premises in order to interview the adult, and
  - (b) is denied entry to the premises by anyone, including the adult.
- (2) On application under subsection (1), the court may make an order authorizing either or both of the following:
- (a) someone from the designated agency to enter the premises and interview the adult;
  - (b) a health care provider, as defined in the *Health Care (Consent) and Care Facility (Admission) Act*, to enter the premises to examine the adult to determine whether health care should be provided.

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- (3) If an application for a court order will result in a delay that could result in harm to the adult, a justice of the peace may issue a warrant authorizing someone from the designated agency to enter the premises and interview the adult.
  - (4) The court may only make an order under subsection (2), and a justice of the peace may only issue a warrant under subsection (3), if there is reason to believe that the adult
    - (a) is abused or neglected, and
    - (b) is, for any of the reasons mentioned in section 44, unable to seek support and assistance.

#### **Duty to report offence**

- 50** If a designated agency has reason to believe that a criminal offence has been committed against an adult about whom a report is made under section 46, the designated agency must report the facts to the police.

#### **Outcome of investigation**

- 51** (1) After conducting an investigation described in section 47 (3) (d), the designated agency may do one or more of the following:
- (a) take no further action;
  - (b) refer the adult to available health care, social, legal, accommodation or other services;
  - (c) report the case to the Public Guardian and Trustee or another agency;
  - (d) [Repealed 2007-34-10.]
  - (e) apply to the court for an interim order requiring a person
    - (i) to stop residing at and stay away from the premises where the adult lives, unless the person is the owner or lessee of the premises,
    - (ii) not to visit, communicate with, harass or interfere with the adult,
    - (iii) not to have any contact or association with the adult or the adult's financial affairs, or
    - (iv) to comply with any other restriction of relations with the adult, for a period of up to 90 days;
  - (f) apply to the court for an order under Part 7 of the *Family Law Act* for the support of the adult;
  - (g) prepare a support and assistance plan that specifies any services needed by the adult, including health care, accommodation, social, legal or financial services.
- (2) An order may be made under subsection (1) (e) without notice to the adult or a person against whom the order is sought, if there are reasonable grounds for believing that proceeding without notice is necessary for the immediate protection of the adult.

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- (3) On application under subsection (1) (e), the court may make an interim order described in that subsection if the designated agency establishes that there is reason to believe
- (a) the person has abused the adult, and
  - (b) the adult is unable, for any of the reasons mentioned in section 44 (c), to seek support and assistance.

**Adult's involvement in decision making**

- 52** The designated agency must involve the adult, to the greatest extent possible, in decisions about how to
- (a) seek support and assistance, and
  - (b) provide the support and assistance necessary to prevent abuse or neglect in the future.

**Support and assistance plan**

- 53**
- (1) A designated agency that prepares a support and assistance plan for an adult must explain the plan and the proposed services to the adult.
  - (2) If health care services or admission to a care facility is proposed in the support and assistance plan, the designated agency must ensure that the *Health Care (Consent) and Care Facility (Admission) Act* is complied with.
  - (3) When explaining the support and assistance plan to the adult, the designated agency
    - (a) must communicate with the adult in a manner appropriate to the adult's skills and abilities, and
    - (b) may allow the adult's spouse or any relatives or friends who accompany the adult or who offer their assistance, to help the adult to understand or demonstrate an understanding of the support and assistance plan.
  - (4) If the adult decides not to accept the services proposed in the support and assistance plan, they must not be provided except under section 56 (3).
  - (5) If the adult decides not to accept the services proposed in the support and assistance plan and the adult appears to be incapable of making that decision, the designated agency may ask the Public Guardian and Trustee to arrange for an assessment of whether the adult is incapable.

**Application for support and assistance orders**

- 54**
- (1) A designated agency that prepares a support and assistance plan may apply to the court for an order authorizing the provision of services to the adult if the report of the assessment under section 53 (5) is that the adult is incapable of deciding not to accept the services proposed in the plan.

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- (2) At least 7 days before the date set for hearing the application, the designated agency must serve a copy of the application on the following:
    - (a) the adult who is the subject of the application;
    - (b) the adult's spouse or, if the adult has no spouse, a near relative of the adult;
    - (c) the person in charge of any hospital, facility or residence where the adult may be residing or receiving care;
    - (d) the Public Guardian and Trustee;
    - (e) [Not in force. Repealed 2006-33-2.]
    - (f) the adult's attorney, representative or guardian;
    - (g) [Repealed 2001-2-5.]
    - (h) any person against whom an order is sought under section 56 (3);
    - (i) any other person that the court may direct.
  - (3) The application must be accompanied by
    - (a) a support and assistance plan that is prepared by the designated agency and includes a statement of the adult's wishes if known, and
    - (b) a report of the assessment under section 53 (5).
  - (4) Subsection (3) (b) does not apply if the only order being sought is an order under section 56 (3) (c).

#### **The hearing**

- 55**
- (1) Any of the following are entitled to be heard at the hearing of the application for the provision of services to the adult:
    - (a) the adult;
    - (b) any person served under section 54 (2);
    - (c) any person supporting and assisting the adult who is the subject of the application;
    - (d) any person from the designated agency;
    - (e) any other person whom the court agrees to hear.
  - (2) It is up to the designated agency to prove on the balance of probabilities, that the adult who is the subject of the application needs and would benefit from the services proposed in the support and assistance plan.

#### **Support and assistance orders**

- 56**
- (1) On hearing the application for the provision of services to the adult, the court must consider whether or not the adult
    - (a) is abused or neglected,
    - (b) is unable to seek support and assistance because of an illness, disease, injury or other condition that affects his or her ability to make decisions about the abuse or neglect, and

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- (c) needs and would benefit from the services proposed in the support and assistance plan.
- (2) When considering the things referred to in subsection (1), the court must take into account the information in the documents mentioned in section 54 (3).
- (3) If the court is satisfied about the matters set out in subsection (1), the court may
  - (a) make an order for the provision of support and assistance to the adult without his or her consent,
  - (b) make an order under Part 7 of the *Family Law Act* for the support of the adult,
  - (c) order a person the court finds has abused the adult
    - (i) to stop residing at and stay away from the premises where the adult lives, unless the person is the owner or lessee of the premises,
    - (ii) not to visit, communicate with, harass or interfere with the adult,
    - (iii) not to have any contact or association with the adult or the adult's financial affairs, or
    - (iv) to comply with any other restriction of relations with the adult,
  - (d) order a person the court finds has abused or neglected the adult to pay for, or contribute towards, the adult's maintenance or services to be provided for the adult, or
  - (e) make any other order the court thinks is appropriate and in the best interests of the adult.
- (4) In an order under subsection (3) (a), the court must specify the kinds of support and assistance that are to be provided for the adult, including any of the following:
  - (a) admission to an available care facility, hospital or other facility for a specified period of up to one year;
  - (b) the provision of available health care;
  - (c) the provision of available social, recreational, educational, vocational or other similar services;
  - (d) supervised residence in a care home, the adult's home or some other person's home, for a specified period of up to one year;
  - (e) the provision, for a specified period of up to one year, of available services to ensure that the adult's financial affairs are properly managed and protected, including any services that may be offered by the Public Guardian and Trustee.
- (5) In an order made under this section, the court must choose the most effective, but the least restrictive and intrusive, way of providing support and assistance.



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- (6) If an order is made under this section, the designated agency must serve a copy of the order on the persons who were served with the application under section 54 (2).
  - (7) An order made under subsection (3) (a) terminates one year after it is made or on an earlier date specified by the court.

**Review of support and assistance orders**

- 57**
- (1) A designated agency that obtained a support and assistance order under section 56 (3) (a) must review the need for the order if
    - (a) the designated agency has reason to believe that any of the adult's needs or the adult's ability to make decisions about support and assistance has changed significantly since the order was made, or
    - (b) the adult, or a spokesperson for the adult, requests a review and has a substantial reason for doing so.
  - (2) If the review under subsection (1) demonstrates that any of the adult's needs or the adult's ability to make decisions about support and assistance has changed significantly, the designated agency must apply to the court to have the order changed or cancelled.
  - (3) A designated agency that obtains a support and assistance order under section 56 (3) (a) may do either or both of the following:
    - (a) review the need for the order before it terminates;
    - (b) apply to the court for a renewal of the order.
  - (4) On application under subsection (2) or (3), the court may
    - (a) change or cancel the order if the court is satisfied that any of the adult's needs or the adult's ability to make decisions about support and assistance has changed significantly, or
    - (b) renew the order for a further period of up to one year if the court is satisfied that the adult still needs the support and assistance provided under section 56 (3) (a).
  - (5) A support and assistance order under section 56 (3) (a) may be renewed only once.

**Review of orders preventing contact**

- 58**
- (1) A person against whom an order is made under section 56 (3) may apply to the court to change or cancel the order.
  - (2) On application under subsection (1), the court may change or cancel the order or make any other order it considers to be in the best interests of the adult who has been found to be abused or neglected.

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**Emergency assistance**

- 59** (1) A person from a designated agency may do anything referred to in subsection (2) without the adult's agreement if
- (a) the adult is apparently abused or neglected,
  - (b) it is necessary, in the opinion of the person from the designated agency, to act without delay in order to
    - (i) preserve the adult's life,
    - (ii) prevent serious physical or mental harm to the adult, or
    - (iii) protect the adult's property from significant damage or loss, and
  - (c) the adult is apparently incapable of giving or refusing consent.
- (2) In the circumstances described in subsection (1), the designated agency may do one or more of the following:
- (a) enter, without a court order or a warrant, any premises where the adult may be located and use any reasonable force that may be necessary in the circumstances;
  - (b) remove the adult from the premises and convey him or her to a safe place;
  - (c) provide the adult with emergency health care;
  - (d) inform the Public Guardian and Trustee that the adult's financial affairs need immediate protection;
  - (e) take any other emergency measure that is necessary to protect the adult from harm.
- (3) After providing the adult with the assistance and services mentioned in subsection (2), the designated agency may conduct investigations under sections 48 and 49.

**Appeal from Provincial Court decision**

- 60** (1) A party may appeal to the Supreme Court from an order made by the Provincial Court under this Part.
- (2) The time limit for bringing an appeal under subsection (1) is 40 days, beginning on the day after the order is made by the Provincial Court.
- (3) An appeal is brought by
- (a) filing a notice of appeal in a registry of the Supreme Court, and
  - (b) serving a copy of the notice of appeal on the parties to the proceeding in which the order of the Provincial Court was made, unless a judge of the Supreme Court orders otherwise.
- (4) The Supreme Court Civil Rules apply to an appeal under subsection (1) to the extent that they are consistent with this section.
- (5) An appeal does not operate as a stay or suspend the operation of the order under appeal, unless a judge of the Supreme Court orders otherwise.

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- (6) After hearing the appeal, the Supreme Court may do one or more of the following:
- (a) confirm or rescind the order of the Provincial Court;
  - (b) make any order that the Provincial Court could have made;
  - (c) direct the Provincial Court to conduct a new hearing.
- (7) On application, the Supreme Court may extend the time limit for bringing an appeal.

**Protection from liability**

- 60.1** (1) A person acting on behalf of or under the direction of a designated agency is not personally liable for anything done or omitted in good faith in the exercise or performance or the intended exercise or performance of a power, duty or function conferred under this Part on a designated agency.
- (2) Subsection (1) does not absolve a designated agency or the government from vicarious liability for an act or omission for which it would be vicariously liable if this section were not in force.

**PART 4 – ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS**

**Transfer of property by incapable adult**

- 60.2** (1) If an adult transfers an interest in the adult's property while the adult is incapable, the transfer is voidable against the adult unless
- (a) the interest was transferred for full and valuable consideration, and that consideration was actually paid or secured to the adult, or
  - (b) at the time of the transfer, a reasonable person would not have known that the adult was incapable.
- (2) In a proceeding in respect of a transfer described in subsection (1), the onus of proving a matter described in subsection (1) (b) is on the person to whom the interest was transferred.

**Designated agencies and organization of community agencies**

- 61** The Public Guardian and Trustee may
- (a) [Repealed 2007-34-16.]
  - (a.1) by regulation, designate as agencies for the purposes of any or all of the provisions of Part 3 any public body, organization or person and limit their functions as designated agencies by reference to any factor that the Public Guardian and Trustee considers advisable,
  - (b) organize networks of public bodies, organizations or persons for the provision of support and assistance to abused or neglected adults,
  - (c) establish an agency to assist in planning or developing a network of public bodies, organizations or persons and in training staff, and

Section 62

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- (d) research the most effective ways of providing community and other services to carry out the purposes of this Act.

**Right to information**

- 62** (1) A designated agency, a qualified health care provider and the Public Guardian and Trustee have the right to all the information necessary to enable them to perform their duties, powers and functions under this Act.
- (2) Any person who has custody or control of information that a designated agency, a qualified health care provider or the Public Guardian and Trustee is entitled to under subsection (1) must disclose that information to the designated agency, qualified health care provider or Public Guardian and Trustee, as applicable.
- (3) This section overrides
  - (a) any claim of confidentiality or privilege, except a claim based on solicitor-client privilege, and
  - (b) any restriction in an enactment or the common law about the disclosure or confidentiality of information, except a restriction in section 51 of the *Evidence Act*.

**Disclosing information**

- 62.1** (1) A designated agency may disclose information obtained under this Act for the purposes of exercising the powers or performing the duties or functions of the designated agency under this Act.
- (2) The Public Guardian and Trustee may disclose information obtained under this Act for the purposes of exercising the powers or performing the duties or functions of the Public Guardian and Trustee.
- (3) A qualified health care provider who performs an assessment of an adult's incapability under this Act may disclose information obtained under this Act for the purposes of providing a report of the assessment to
  - (a) the Public Guardian and Trustee,
  - (b) a health authority designate, for the purposes of exercising the powers or performing the duties or functions of the health authority designate under this Act,
  - (c) a designated agency, for the purposes of exercising the powers or performing the duties or functions of the designated agency under this Act, and
  - (d) a person who
    - (i) makes a request, in writing, to the qualified health care provider for the report, and
    - (ii) confirms in the request that the report is to be used only for the purpose of an application to the court for an order under this Act.
- (4) Subsection (3) overrides any restriction in an enactment or the common law about the disclosure or confidentiality of information.

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**Supreme Court jurisdiction**

- 62.2** (1) Nothing in this Act
- (a) limits the inherent jurisdiction of the court to act in a *parens patriae* capacity, or
  - (b) deprives a person of the right to ask the court to exercise that jurisdiction.
- (2) [Not in force.]

**Costs of an application**

- 62.3** For any matter for which an application may be made under Part 2 or 2.1, or section 62.2 (2), the court may order that the costs of the application be paid from the property of the adult who is the subject of the application.

**Power to make regulations**

- 63** (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.
- (2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:
- (a) prescribing bodies for the purpose of the definition of “health authority designate” in section 1, and conferring on those bodies the authority to designate a person for the purpose of issuing a certificate of incapability under section 32;
  - (a.1) permitting a regional health board prescribed under paragraph (a) to authorize, by bylaw approved by the minister responsible for the *Health Authorities Act*, an employee to make the designation referred to in paragraph (a) on behalf of the regional health board;
  - (b) for the purpose of the definition of “health care provider” in section 1, prescribing Acts for the purposes of Part 2.1 and for the purposes of Part 3;
  - (c) prescribing classes of health care providers whose members may act as qualified health care providers, and conferring a discretion on bodies that regulate health care providers to put limits or conditions on those whom they regulate respecting eligibility to act as qualified health care providers;
  - (d) respecting procedures for assessments of incapability, including
    - (i) prescribing different procedures for assessments made for different purposes,
      - (i.1) prescribing procedures if an assessment or part of an assessment is carried out by more than one qualified health care provider,
      - (ii) prescribing factors to be considered in an assessment of incapability, and
      - (iii) prescribing indicators of capability or incapability;
    - (d.01) respecting requests by a qualified health care provider to other qualified persons for the purposes of seeking advice respecting an assessment;

*[This unofficial consolidation of the Adult Guardianship Act includes all amendments in force as of November 24, 2014 and reflects how the Act will read on December 1, 2014.]*

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- (d.1) providing for exemptions from reassessments of incapability in relation to adults who are being discharged from a facility designated under the *Mental Health Act*;
- (e) respecting the making of an assessment report and the contents of the report;
- (f) prescribing forms and certificates for the purposes of this Act;
- (g) to (n) [Not in force.];
- (o) prescribing offences for the purposes of sections 27 and 37;
- (o.1) respecting the service and content of a notice, and the opportunity to respond, for the purposes of section 32 (3.1), including respecting deemed receipt of a notice;
- (p) prescribing time limits within which a person must apply for a second assessment of incapability under section 33 (3);
- (q) and (r) [Not in force.];
- (s) respecting disclosure of information by the Public Guardian and Trustee under section 62.1;
- (t) defining words and expressions used but not defined in this Act.

**Offences**

- 64** (1) A person who
- (a) contravenes section 46 (5),
  - (b) obstructs or hinders a person who is conducting an investigation under section 48 or 49, or
  - (c) contravenes an order made under section 51 (3) or 56 (3) (c),
- commits an offence.
- (2) Section 5 of the *Offence Act* does not apply to this Act or the regulations.

**65** [Not in force.]

**Commencement**

**66** This Act comes into force by regulation of the Lieutenant Governor in Council.

## *Statutory Property Guardianship Regulation (SPG Regulation)*

*This is an unofficial consolidation of the Statutory Property Guardianship Regulation prepared for convenience only and reflects how the Regulation read on December 1, 2014.*



## Unofficial Consolidation

B.C. Reg. 115/2014

Current to December 1, 2014

### *Adult Guardianship Act*

## STATUTORY PROPERTY GUARDIANSHIP REGULATION

[includes amendments up to B.C. Reg. 203/2014]

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#### **FORM 1**

#### **FORM 2**

### **PART 1 – DEFINITIONS AND APPLICATION**

#### **Definitions**

- 1** In this regulation:

“**Act**” means the *Adult Guardianship Act*;

“**assessment**” means an assessment of incapability for the purposes of

- (a) determining whether to issue a certificate of incapability under section 32 (3) of the Act,
- (b) conducting a second assessment under section 33 (3) of the Act, or



# Statutory Property Guardianship Regulation – Unofficial Consolidation

## Part 2 – Prescribed Persons

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(c) conducting a reassessment under section 34 of the Act, including for the purposes of section 35 (3) of the Act;

“**assessment report**” means an assessment report made in accordance with section 10 [on completing assessment].

### Application

2 This regulation applies only for the purposes of Part 2.1 of the Act.

## PART 2 – PRESCRIBED PERSONS

### Health care providers

- 3 (1) A person who is licensed, certified or registered under one or more of the following Acts to provide health care is prescribed as a health care provider:
- (a) *Health Professions Act*;
  - (b) *Social Workers Act*.
- (2) The classes of health care providers who are prescribed as qualified health care providers are as follows:
- (a) registrants of the British Columbia College of Social Workers;
  - (b) registrants of the College of Registered Nurses of British Columbia;
  - (c) registrants of the College of Registered Psychiatric Nurses of British Columbia;
  - (d) registrants of the College of Occupational Therapists of British Columbia;
  - (e) registrants of the College of Psychologists of British Columbia.
- (3) A registrant referred to in subsection (2) may exercise powers and perform duties as a qualified health care provider only if
- (a) the board for the college referred to in subsection (2) of which the registrant is a member has established standards, limits or conditions respecting eligibility, by its members, to act as qualified health care providers, and
  - (b) the registrant is eligible under, and acting in accordance with, all applicable standards, limits and conditions referred to in paragraph (a).

### Health authority designates

- 4 (1) The following are prescribed as bodies that may designate persons as having authority to issue certificates of incapability under section 32 of the Act:
- (a) a regional health board within the meaning of the *Health Authorities Act*;
  - (b) the Provincial Health Services Authority.
- (2) A regional health board prescribed under subsection (1) (a) may authorize an employee, by bylaw approved by the minister responsible for the administration of the *Health Authorities Act*, to make the designation referred to in that subsection on behalf of the regional health board.

**Statutory Property Guardianship Regulation – Unofficial Consolidation**  
Part 3 – Conducting Assessments

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**PART 3 – CONDUCTING ASSESSMENTS**

**Assessment components**

- 5** An assessment must include both of the following components:
- (a) a medical component,
    - (i) conducted by a medical practitioner within 6 months before the assessment report is completed, and
    - (ii) consisting of one or more examinations and all resulting diagnoses and prognoses relevant to the adult’s incapability to manage that adult’s financial affairs;
  - (b) a functional component,
    - (i) conducted by a qualified health care provider, and
    - (ii) consisting of one or more evaluations of the adult’s understanding of, and ability to manage, that adult’s financial affairs.

**Information to be given before assessment**

- 6** (1) Before conducting the medical or functional component of an assessment, the qualified health care provider responsible for that component must advise the adult being assessed of all of the following:
- (a) that the adult is being assessed to determine whether the adult is incapable of managing that adult’s financial affairs;
  - (b) that the assessment may be used to determine whether the adult will have, or continue to have, a statutory property guardian;
  - (c) that the adult can refuse to be assessed, in which case the assessment may be conducted using observational information and information gathered from other sources;
  - (d) that the adult may have a person of his or her choosing present during all or part of the assessment unless, in the opinion of the qualified health care provider, the person’s presence would disrupt or in any way adversely affect the assessment process;
  - (e) that if the assessment is completed, the adult may have a copy of the assessment report from the person who completes the report;
  - (f) that the adult may ask questions of, and raise concerns with, the qualified health care provider with respect to the assessment and the results of the assessment.
- (2) Despite subsection (1), advice need not be given in accordance with that subsection if the qualified health care provider has reason to believe that it may result in
- (a) serious physical or mental harm to the adult, or
  - (b) significant damage or loss to the adult’s property.

## Statutory Property Guardianship Regulation – Unofficial Consolidation

### Part 3 – Conducting Assessments

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#### Others may be present

- 7** (1) A qualified health care provider may permit a person other than the adult being assessed to be present during all or part of an assessment
- (a) if requested by the adult, or
  - (b) if, in the opinion of the qualified health care provider, it would be necessary or advisable for the purposes of
    - (i) communicating with the adult, or
    - (ii) conducting the assessment.
- (2) A qualified health care provider may prohibit a person from being present during all or part of an assessment if, in the opinion of the qualified health care provider, the presence of the person would disrupt or in any way adversely affect the assessment process.
- (3) Subsection (2) applies even if the adult requests the person to be present.

#### Assessment may occur without adult

- 8** An assessment, or part of an assessment, may be conducted without the adult being present, and based on observational information and information gathered from other sources, if
- (a) the adult
    - (i) refuses, in full or in part, to participate in the assessment, or
    - (ii) cannot reasonably be accessed or is not reasonably able to participate in the assessment, and
  - (b) the qualified health care provider conducting the assessment is satisfied that the assessment would be completed accurately using the information available.

#### Test of incapability

- 9** (1) An adult is incapable of managing the adult's financial affairs if the qualified health care provider determines that any of the following apply:
- (a) the adult cannot understand the nature of the adult's financial affairs, including the approximate value of the adult's business and property and the obligations owed to the adult's dependants, if any;
  - (b) the adult cannot understand the decisions that must be made or actions that must be taken for the reasonable management of the adult's financial affairs;
  - (c) the adult cannot understand the risks and benefits of making or failing to make particular decisions, or taking or failing to take particular actions, in respect of the adult's financial affairs;
  - (d) the adult cannot understand that the information referred to in this subsection applies to the adult;

## Statutory Property Guardianship Regulation – Unofficial Consolidation

### Part 4 – Certificates of Incapability

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- (e) the adult cannot demonstrate that he or she is able to implement, or to direct others to implement, the decisions or actions referred to in paragraph (b).
- (2) For the purposes of sections 33 (3) and 34 of the Act, a qualified health care provider must consider the changes, if any, in the adult's incapability since the previous assessment and the adult's understanding of those changes.  
[am. B.C. Reg. 203/2014, Sch. s. 1.]

#### On completing assessment

- 10** (1) On completing an assessment, the qualified health care provider who is conducting the assessment must do all of the following:
- (a) complete an assessment report as set out in Form 1;
  - (b) attach to the assessment report details of
    - (i) the factors that were considered in making the determination of the adult's capability or incapability,
    - (ii) the conclusions that were reached on the basis of those factors,
    - (iii) a summary of the information, if any, gathered under section 8 [*assessment may occur without adult*], and
    - (iv) any other matter the qualified health care provider believes to be relevant to the assessment;
  - (c) advise the adult of the details and the results of the assessment, including the determination of the adult's capability or incapability;
  - (d) offer to the adult a copy of the report and attachments referred to in paragraphs (a) and (b).
- (2) A qualified health care provider need not comply with the requirements of subsection (1) (c) or (d) if the qualified health care provider has reason to believe that it may result in
- (a) serious physical or mental harm to the adult, or
  - (b) significant damage or loss to the adult's property.

## PART 4 – CERTIFICATES OF INCAPABILITY

#### Before issuing certificate of incapability

- 11** (1) For the purpose of section 32 (3.1) of the Act, a health authority designate must give to the adult and, if contact information is known to the health authority designate, the adult's spouse or a near relative of the adult,
- (a) notice of the intention to issue a certificate of incapability, and
  - (b) written reasons for the issuance of the certificate.
- (2) Notice and reasons under subsection (1) may be given as follows:
- (a) in person;

## Statutory Property Guardianship Regulation – Unofficial Consolidation

### Part 5 – Transition

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- (b) by mail, other than by electronic mail, in which case, the notice and reasons are deemed to have been received 7 days after the date of mailing;
  - (c) by leaving them at the person’s residence with an adult whom the health authority designate has reason to believe resides with the adult, in which case, the notice and reasons are deemed to have been received on the date on which the notice and reasons were left.
- (3) For the purposes of section 32 (3.1) (c), the adult, spouse or near relative must be given at least 10 days after receiving or being deemed to have received the notice and reasons given under this section to respond to the notice and reasons.

#### Certificate of incapability

- 12 A health authority designate may issue a certificate of incapability as set out in Form 2.

#### Request for second assessment

- 13 For the purposes of section 33 (3) (a) of the Act, a request for a second assessment must be made within 40 days after the date that the Public Guardian and Trustee gives or sends to the adult the advice that the Public Guardian and Trustee is the adult’s statutory property guardian.
- 14 Repealed. [B.C. Reg. 203/2014, Sch. s. 2.]

## PART 5 – TRANSITION

#### Application of this Part

- 15 (1) In this Part, “**director’s certificate**” means a certificate as described in paragraph (a) of the definition of “patient” in the *Patients Property Act*.
- (2) This Part applies only if all of the following conditions are met:
- (a) before December 1, 2014, a person began an evaluation of the incapability of an adult to manage the adult’s financial affairs;
  - (b) the purpose of the evaluation under paragraph (a) was to
    - (i) assist in determining whether a director’s certificate should be issued in respect of the adult, or
    - (ii) determine whether the adult is incapable of managing his or her financial affairs;
  - (c) as of December 1, 2014, no decision had yet been made as to whether to issue a director’s certificate in respect of the adult;
  - (d) on or after December 1, 2014, a health authority designate
    - (i) receives a report, based wholly or in part on the results of the evaluation referred to in paragraph (a), that the adult is incapable of managing his or her financial affairs, and

## Statutory Property Guardianship Regulation – Unofficial Consolidation

### Part 5 – Transition

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- (ii) must determine whether to issue a certificate of incapability in respect of the adult.

#### Conducting assessments

- 16** (1) An evaluation described in section 15 (2) (a) and (b) of this regulation is deemed to be an assessment of incapability for the purposes of determining whether to issue a certificate of incapability under section 32 (3) of the Act if
- (a) subject to subsection (2) (a) of this section, the person conducting the evaluation is a qualified health care provider, and
  - (b) the evaluation is conducted in accordance with Part 3 [*Conducting Assessments*], as modified by this section.
- (2) If this Part applies,
- (a) despite section 3 (3), only section 3 (2) applies for the purpose of determining who is a qualified health care provider,
  - (b) despite section 5, only a medical component is required,
  - (c) despite section 6, but subject to subsection (2) of that section, only the advice described in subsection (1) (a) of that section must be given to the adult,
  - (d) despite section 9, that section does not apply for the purpose of determining whether an adult is incapable of managing the adult’s financial affairs,
  - (e) despite section 10 (1) (a) and (b), the report received under section 15 (2) (d) is deemed to be in the prescribed form if the report
    - (i) is in writing,
    - (ii) includes information sufficient to identify the adult,
    - (iii) sets out the findings of the person conducting the evaluation, and
    - (iv) is signed and dated by, and includes contact information for, the person who was conducting the evaluation, and
  - (f) despite section 10 (1) (c) and (d), those paragraphs do not apply.

**Statutory Property Guardianship Regulation – Unofficial Consolidation**  
Form 1

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**FORM 1**

[en. B.C. Reg. 203/2014, Sch. s. 3.]

**Adult Guardianship Act**  
**REPORT OF ASSESSMENT OF INCAPABILITY**  
*(Sections 32 to 34 of the Adult Guardianship Act,  
Section 10 of the Statutory Property Guardianship Regulation)*  
*[to be completed by a qualified health care provider]*

I, \_\_\_\_\_ *[name and profession]*,  
am a qualified health care provider under the *Adult Guardianship Act*.

I confirm that I have assessed \_\_\_\_\_ *[name of adult]*,  
born \_\_\_\_\_ *[date of birth of adult]*, to determine whether he/she is  
incapable of managing his/her financial affairs.

**Purpose of Assessment**  
*[mark the appropriate box]*

- Assessment under section 32 of the *Adult Guardianship Act*
- Second assessment under section 33 of the *Adult Guardianship Act*
- Reassessment under section 34 of the *Adult Guardianship Act*, including for the purposes of  
section 35 (3) of that Act

**Determination of Qualified Health Care Provider**  
*[mark the appropriate box]*

My determination based on my assessment is that \_\_\_\_\_ *[name  
of adult]* is

- Capable** of managing his/her financial affairs
- Incapable** of managing his/her financial affairs

\_\_\_\_\_ *[signature]*

\_\_\_\_\_ *[date]*

Details of the assessment are attached.  
*[attach securely to this form all supporting documentation]*

Contact Information for Qualified Health Care Provider

\_\_\_\_\_  
*[name of qualified health care provider]*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
*[address]*

\_\_\_\_\_ *[telephone number]*

\_\_\_\_\_ *[fax number]*

**Statutory Property Guardianship Regulation – Unofficial Consolidation**  
Form 2

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**FORM 2**

**Adult Guardianship Act**  
**CERTIFICATE OF INCAPABILITY**

*(Section 32 of the Adult Guardianship Act,  
Section 12 of the Statutory Property Guardianship Regulation)*

*[to be completed by a health authority designate]*

A certificate of incapability is issued for \_\_\_\_\_  
*[name of adult]*, born \_\_\_\_\_ *[date of birth of adult]*.

The Public Guardian and Trustee of British Columbia is the statutory property guardian for \_\_\_\_\_ *[name of adult]*, and may make decisions respecting his/her financial affairs, as of the date on which this certificate of incapability was signed.

I, \_\_\_\_\_ *[name and position of health authority designate]*, am a health authority designate, designated by \_\_\_\_\_ *[prescribed body]*, and I am satisfied of all of the matters set out in section 32 (3) (a) to (e) of the *Adult Guardianship Act*.

\_\_\_\_\_  
\_\_\_\_\_  
*[signature of health authority designate]*  
*[date]*

Contact Information for Health Authority Designate

\_\_\_\_\_  
*[name of Health Authority Designate]*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
*[address]*

\_\_\_\_\_  
*[telephone number]*

\_\_\_\_\_  
*[fax number]*



## *Patients Property Act (PPA)*

*This is an unofficial consolidation of the Patients Property Act prepared for convenience only and reflects how the Act read on December 1, 2014.*



# PATIENTS PROPERTY ACT

## [RSBC 1996] CHAPTER 349

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- 27 Costs
- 28 Orders by court
- 29 Repealed
- 30 Appointment of new Public Guardian and Trustee
- 31 Persons outside British Columbia

## Definitions

### 1 In this Act:

**"committee"** means the following persons:

- (a) a person appointed as committee under section 6 (1);
- (b) the Public Guardian and Trustee under section 6 (3);
- (c) a statutory property guardian under Part 2.1 of the *Adult Guardianship Act*;

**"court"** means Supreme Court;

**"patient"** means

(a) a person who, before paragraph (a.1) of this definition comes into force, was described in a certificate signed by the director of a Provincial mental health facility or psychiatric unit as defined in the *Mental Health Act* as one who is, because of mental infirmity arising from disease, age or otherwise, incapable of managing his or her affairs,

(a.1) a person who has a statutory property guardian under Part 2.1 of the *Adult Guardianship Act*, or

(b) a person who is declared under this Act by a judge to be

- (i) incapable of managing his or her affairs,
- (ii) incapable of managing himself or herself, or
- (iii) incapable of managing himself or herself or his or her affairs;

**"Public Guardian and Trustee"** means the Public Guardian and Trustee holding office under the *Public Guardian and Trustee Act*.

**"representation agreement"** means an agreement made under the *Representation Agreement Act*.

## Application and service of notice

- 2** (1) The Attorney General, a near relative of a person or other person may apply to the court for an order declaring that a person is, because of

- (a) mental infirmity arising from disease, age or otherwise, or
  - (b) disorder or disability of mind arising from the use of drugs,
- incapable of managing his or her affairs or incapable of managing himself or herself, or incapable of managing himself or herself or his or her affairs.
- (2) Subject to subsection (3), a notice setting out the time and place of the application must be served personally on the person who is the subject of the application not less than 10 days before the date of the application.
- (3) On an application under this section, the court may
- (a) direct that any person be served with notice of the application, or
  - (b) dispense with service on any person of notice of the application.
- (4) Despite subsection (3), unless the court is satisfied that service on the person who is the subject of the application would be injurious to that person's health or would for any other reason be inadvisable in the interests of that person, the court must not dispense with service on that person.

### Hearing of application

#### 3 (1) If, on

- (a) hearing an application, and
- (b) reading the affidavits of 2 medical practitioners setting out their opinion that the person who is the subject of the application is, because of
  - (i) mental infirmity arising from disease, age or otherwise, or
  - (ii) disorder or disability of mind arising from the use of drugs,incapable of managing his or her affairs or incapable of managing himself or herself, or incapable of managing himself or herself or his or her affairs,

the court is satisfied that the person is, because of

- (c) mental infirmity arising from disease, age or otherwise, or
- (d) disorder or disability of mind arising from the use of drugs,

incapable of managing his or her affairs or incapable of managing himself or herself, or incapable of managing himself or herself or his or her affairs, it must, by order, declare the person

(e) incapable of managing his or her affairs,

(f) incapable of managing himself or herself, or

(g) incapable of managing himself or herself or his or her affairs.

(2) The court may, on hearing an application under this section and reading the affidavits described in subsection (1), direct an issue to be tried, and in that event the following provisions apply:

(a) the question in issue is whether the person who is the subject of the application is, because of

(i) mental infirmity arising from disease, age or otherwise, or

(ii) disorder or disability of mind arising from the use of drugs,

incapable of managing his or her affairs or incapable of managing himself or herself, or incapable of managing himself or herself or his or her affairs;

(b) this Act applies to the issue and the trial of it;

(c) the Supreme Court Civil Rules apply;

(d) the court must

(i) dismiss the application, or

(ii) by order, declare that the person who is the subject of the application

(A) is incapable of managing his or her affairs,

(B) is incapable of managing himself or herself, or

(C) is incapable of managing himself or herself or his or her affairs.

### **Reassessment and review**

**3.1** (1) The rights to reassessment and review set out in sections 34 and 35 of the *Adult Guardianship Act* apply, and section 37 (3) and (4) of that Act

applies, to a patient as defined in paragraph (a) of the definition of "patient" under this Act as if

(a) the patient is an adult with a statutory property guardian under the *Adult Guardianship Act*,

(b) the patient's committee is a statutory property guardian under the *Adult Guardianship Act*,

(c) the director of a Provincial mental health facility or psychiatric unit who signed the certificate referred to in paragraph (a) of the definition of "patient" under this Act, or a person acting on his or her behalf or who is his or her successor, is the health authority designate referred to in the *Adult Guardianship Act*,

(d) the certificate referred to in paragraph (a) of the definition of "patient" under this Act is a certificate of incapability issued under section 32 of the *Adult Guardianship Act*, and

(e) for the purposes of section 35 (2) (b) of the *Adult Guardianship Act*, the body that appointed the director who signed the certificate referred to in paragraph (a) of the definition of "patient" under this Act is a party to a review.

(2) For the purposes of subsection (1),

(a) [Not in force.]

(b) if statutory property guardianship ends under section 37 (3) of the *Adult Guardianship Act*, the person ceases to be a patient.

(3) For greater certainty, the rights to reassessment and review set out in sections 34 and 35, and section 37 (3) and (4), of the *Adult Guardianship Act* continue to apply to a patient as defined in paragraph (a.1) of the definition of "patient".

#### **Order declaring person no longer incapable**

**4** (0.1) This section applies only to patients as defined in paragraph (b) of the definition of "patient".

(1) At any time after one year from the making of an order under section 3 or sooner by leave of the court, the Attorney General, the patient or other person may apply to the court for an order declaring that a patient is no longer

- (a) incapable of managing his or her affairs,
- (b) incapable of managing himself or herself, or
- (c) incapable of managing himself or herself or his or her affairs.

(2) Except by leave of the court, a patient must not be the subject of an application under this subsection more often than once in any year.

(3) If, on

- (a) hearing an application under this section, and
- (b) reading the affidavits of 2 medical practitioners setting out their opinion that the patient is no longer
  - (i) incapable of managing his or her affairs,
  - (ii) incapable of managing himself or herself, or
  - (iii) incapable of managing himself or herself or his or her affairs,

the court is satisfied that the patient is no longer

- (c) incapable of managing his or her affairs,
- (d) incapable of managing himself or herself, or
- (e) incapable of managing himself or herself or his or her affairs,

the court may, by order, so declare.

## **Examination**

**5** (1) If

- (a) an application is made or an issue is tried under section 3,
- (b) an appeal is taken from an order under section 3, or
- (c) an application is made under section 4,

the court hearing the appeal or application or trying the issue may order the person who is the subject of the application or the patient to attend and submit at the time and place the order directs to examination.

(2) An examination under this section must be made by

(a) one or more medical practitioners other than those whose affidavits were before the court on the appeal, application or trial, or

(b) a board of 3 or more medical practitioners designated by the College of Physicians and Surgeons of British Columbia at the request of the court.

(3) If the person who is the subject of the application or the patient requests an examination under this section, unless the court hearing the appeal or application is satisfied that the person or patient is not mentally competent to form and express the request, the court must order the examination.

### **Appointment of committee**

**6** (1) Subject to section 13, on application by the Attorney General or any other person, the court may appoint any person to be the committee of the patient.

(2) On application by the Attorney General, the Public Guardian and Trustee or any other person, the court may, subject to section 13, rescind the appointment of a person appointed as committee.

(3) Subject to section 16, except during the time that a person appointed under subsection (1), other than the Public Guardian and Trustee, is the committee of a patient, the Public Guardian and Trustee is the committee of the patient.

(4) An application under subsection (1) and an application under section 2 may be made as one application.

### **Service of notice of application to appoint committee**

**7** Notice in writing of an application to appoint a committee must be served, not less than 10 days before the date of the application, on

(a) the Public Guardian and Trustee, and

(b) the committee of the patient if one has been appointed.



### **Discharge of committee**

- 8** If the court appoints a committee to succeed another committee, the former committee, on being discharged under section 13,
- (a) ceases to be the committee of the patient, and
  - (b) must transfer the estate of the patient to the appointed committee.

### **Nomination of committee by patient**

- 9** On an application for the appointment of a committee, if there is presented to the court a nomination in writing of a committee by the patient,
- (a) made and signed by the patient at a time when the patient was of full age and of sound and disposing mind, and
  - (b) executed in accordance with the requirements for the making of a will under the *Wills, Estates and Succession Act*,
- the nominee must be appointed committee unless there is good and sufficient reason for refusing the appointment.

### **Inventory, security and accounts**

- 10** (1) If a committee other than the Public Guardian and Trustee has been appointed under this Act, the following rules apply:
- (a) [Repealed 2003-37-38.]
  - (b) if property belonging to the patient is discovered after the first passing of accounts under paragraph (d) and that property is valued at \$25 000 or more, the committee must, within 30 days of the discovery of the property, deliver to the Public Guardian and Trustee a true account of the property as it is discovered;
  - (c) if ordered by the court, either on the person's appointment as committee or subsequently on the application of the Public Guardian and Trustee, the committee must give security for the proper performance of the committee's duties in the amount the court directs in the form of a bond that must be in the name of the Public Guardian and Trustee, approved by the Registrar of the Supreme Court, and filed with the Public Guardian and Trustee;

(d) the committee must pass the committee's accounts before the Public Guardian and Trustee at the times directed by the Public Guardian and Trustee, including, if the Public and Guardian Trustee requires it, a true inventory of the whole estate of the patient, stating the estimated revenue of it and setting out the debts, credits and effects of the patient to the extent they have come to the knowledge of the committee;

(e) if required by the Public Guardian and Trustee, the committee must pass the accounts before the Supreme Court in the county in which the committee was appointed committee.

(2) A committee may at any time appeal the passing of accounts by the Public Guardian and Trustee to the Supreme Court.

### **When a person ceases to be a patient**

**11** (1) A person ceases to be a patient on any of the following events:

(a) to (d) [Repealed 2014-9-33.]

(e) the making of an order declaring that

(i) the patient is no longer incapable of managing his or her affairs,

(ii) the patient is no longer incapable of managing himself or herself, or

(iii) the patient is no longer incapable of managing himself or herself or his or her affairs.

(2) [Repealed 2014-9-33.]

(3) Despite anything in this Act to the contrary, the Public Guardian and Trustee may carry out and complete a transaction entered into by the Public Guardian and Trustee in relation to a patient's estate which is not completed before the patient ceases to be a patient.

### **Application for discharge of committee**

**12** If a person ceases to be a patient, the person or the committee of the person's estate other than the Public Guardian and Trustee may apply, on 10 days' notice in writing to the Public Guardian and Trustee, to the court for the discharge of the committee.

## Passing of accounts

### 13 (1) If

- (a) an application is made under section 12 for the discharge of a committee other than the Public Guardian and Trustee, or
- (b) an application is made for the rescission of the appointment of a committee other than the Public Guardian and Trustee,

the court may, and must if requested by the Public Guardian and Trustee, order that the committee pass the accounts and may, in the order, specify the time and the manner of passing the accounts, and must adjourn the application until the carrying out of the order.

(2) If a committee fails to pass the accounts as ordered, or if the accounts are found to be incomplete or inaccurate, the committee may be required to attend before the court to explain why the accounts have not been passed or a proper proceeding in connection with them taken, and the court may give the direction it considers proper.

(3) After the order made under subsection (1) has been carried out, and the court is satisfied that no further passing of accounts is necessary, the court may order that the committee is discharged.

(4) If the Public Guardian and Trustee or a committee is discharged under this section, the Public Guardian and Trustee or the committee

- (a) has no further powers or duties with respect to the estate of the person who has ceased to be a patient, and
- (b) is released, except in respect of undisclosed acts, neglects, defaults or accounts or dishonest or unlawful conduct, from all actions, claims and demands for or concerning the Public Guardian and Trustee's or the committee's management or administration of the estate.

## Compensation for acting as committee

**14** (1) A person may be allowed reasonable compensation from the estate of a patient or from the estate of a person who has ceased to be a patient for services rendered as committee of the patient or of the person who has ceased to be a patient.

(2) The compensation, if any, to be paid to a person other than the Public Guardian and Trustee must be fixed on the passing of accounts.

(3) If, in the opinion of a person who is entitled to compensation under this section, the estate of a patient or the estate of a person who has ceased to be a patient is so limited in value that the payment out of it of compensation would create poverty or hardship for the patient or person who has ceased to be a patient or the patient's dependants, no compensation need be claimed or paid or no amount need be retained out of the estate.

(4) A committee of a patient or a person who has been the committee of a person who has ceased to be a patient has a first lien or charge on the estate of the patient or person who has ceased to be a patient for all costs, expenses and advances made by him or her for or incidental to the administration of the estate of the patient or the person who has ceased to be a patient or for the benefit of the patient or person who has ceased to be a patient, the patient's family or other dependants.

## **Powers of committee**

**15** (1) Subject to section 16,

(a) the committee of a patient as defined in paragraph (a) or (a.1) of the definition of "patient" in section 1 has all the rights, privileges and powers with regard to the estate of the patient as the patient would have if of full age and of sound and disposing mind, and

(b) the committee of a patient

(i) declared to be incapable of managing his or her affairs has all the rights, privileges and powers with regard to the estate of the patient as the patient would have if of full age and of sound and disposing mind,

(ii) declared to be incapable of managing himself or herself has the custody of the person of the patient, and

(iii) declared to be incapable of managing himself or herself or his or her affairs has all the rights, privileges and powers with regard to the estate of the patient as the patient would have if of full age and

of sound and disposing mind, and as well the custody of the person of the patient.

(2) For investing money, a committee is a trustee within the meaning of the *Trustee Act*.

### **Special direction limiting powers of committee**

**16** (1) On the appointment of a committee, the court may, by the same order, attach conditions or restrictions on the committee's exercise of certain rights, privileges or powers specified in the order, including requiring the written consent of the Public Guardian and Trustee prior to the committee's exercise of any right, privilege or power.

(2) If, under subsection (1), the court has attached a condition that the consent of the Public Guardian and Trustee is required prior to the committee's exercise of any right, privilege or power, the registrar of the court must send a copy of the court's order to the Public Guardian and Trustee.

### **Rights, powers and privileges included**

**17** The rights, powers and privileges vested in the committee include all the rights, powers and privileges that would be exercisable by the patient as a trustee, as the guardian of a person, as the holder of a power of appointment and as the personal representative of a person, if the person were of full age and of sound and disposing mind.

### **Exercise of powers**

**18** (1) A committee must exercise the committee's powers for the benefit of the patient and the patient's family, having regard to the nature and value of the property of the patient and the circumstances and needs of the patient and the patient's family.

(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.

### **Effect on power of attorney or representation agreement of person becoming a patient by court order**

**19** On a person becoming a patient as defined in paragraph (b) of the definition of "patient" in section 1,

- (a) every power of attorney given by the person is terminated, and
- (b) unless the court orders otherwise, every representation agreement made by the person is terminated.

### **Effect on power of attorney or certain representation agreements of person becoming a patient other than by court order**

**19.1** (1) On a person becoming a patient as defined in paragraph (a) or (a.1) of the definition of "patient" in section 1, the following are suspended:

- (a) every power of attorney that was given by the person;
- (b) every provision of a representation agreement made by the person in respect of his or her property.

(2) After receiving a copy of the suspended power of attorney or of a representation agreement any provision of which has been suspended under subsection (1) and any information that the Public Guardian and Trustee may require, the Public Guardian and Trustee must determine whether it is necessary or desirable for the Public Guardian and Trustee to manage the patient's property under this Act.

(3) If the Public Guardian and Trustee determines that it is necessary or desirable for the Public Guardian and Trustee to manage the patient's property, then on the making of the determination

- (a) the power of attorney that was suspended under subsection (1) is terminated, or
- (b) the provisions of the representation agreement that were suspended under subsection (1) are cancelled,

as the case may be.

(4) If the Public Guardian and Trustee determines that it is not necessary or desirable for the Public Guardian and Trustee to manage the patient's property,

- (a) the Public Guardian and Trustee's authority as committee is terminated on the making of that determination, and
- (b) the suspension of the power of attorney or of the provisions of the representation agreement ends on the termination of the Public Guardian and Trustee's authority as committee.

## **Repealed**

**19.2** [Repealed 2011-5-28.]

## **Repealed**

**20** [Repealed 2011-5-28.]

## **Effect of things done by committee**

**21** Everything done by a committee in the exercise of the committee's powers under this Act has the same effect with respect to all other persons as if done by the patient at a time when the patient was of full age and of sound and disposing mind.

## **Actions for and against patient**

- 22** (1) A person other than the committee of the patient must not bring an action on behalf of the patient.
- (2) An action against a patient must be brought against the committee as litigation guardian.

## **Cost of maintenance, care and treatment**

- 23** (1) A patient is liable for the cost of the patient's maintenance, care and treatment and, subject to section 18, the committee must pay out of the estate of the patient the amounts necessary to defray all just and reasonable charges for the maintenance, care and treatment of the patient.
- (2) The Public Guardian and Trustee may permit a patient of whose estate the Public Guardian and Trustee is committee to hold, manage or control a part of the estate to defray normal living expenses or part of them, and the Public Guardian and Trustee is not liable for loss or damage to the estate of the

patient resulting from the patient holding, managing or controlling that part of the estate.

## Death of patient

**24** (1) Subject to subsection (2), on the death of a patient and until a representation grant, within the meaning of the *Wills, Estates and Succession Act*, is issued in respect of the patient's estate and notice in writing of the representation grant is served on the committee, the committee of the patient

(a) continues to have the rights, powers, duties and privileges that the committee would have had if the patient had not died, and

(b) has the powers of a person who has been issued a representation grant.

(2) Despite section 10 (1) (d), the Public Guardian and Trustee must not require the committee to pass accounts before the Public Guardian and Trustee after the death of the patient.

(3) After the death of the patient, the committee must provide the committee's accounts to

(a) the executor or administrator of the patient's estate, or

(b) if the committee and the executor or administrator of the patient's estate are the same person, the beneficiaries of the patient's estate.

(4) The executor, administrator or beneficiaries of the patient's estate may provide to the committee written approval of, and consent to, the accounts received under subsection (3).

(5) If a committee fails to provide its accounts as required under subsection (3), or if the accounts are incomplete or inaccurate, a person entitled to the accounts may require the committee to attend before the court to explain the committee's failure to provide the accounts or to provide a satisfactory accounting, and the court may give the direction it considers proper.

(6) The court may, on being satisfied that no further accounting by the committee is necessary, order at any time that the committee is discharged.



## **Repealed**

**25–26** [Repealed 1999-25-23.]

## **Costs**

**27** The costs of all proceedings under this Act are in the discretion of the court.

## **Orders by court**

**28** If there is insufficient provision in this Act, the court may at any time, on the application of any person, make an order not in contradiction to this Act or the regulations that it considers necessary for or in the interests of the proper, honest and prudent management and administration of the estate of a patient.

## **Repealed**

**29** [Repealed 1999-25-23.]

## **Appointment of new Public Guardian and Trustee**

**30** (1) If a new Public Guardian and Trustee is appointed, the new Public Guardian and Trustee is committee to every patient of whom the predecessor was the committee.

(2) [Repealed 1999-25-23.]

## **Persons outside British Columbia**

**31** (1) If a person resident in another province who would be, if resident in British Columbia, a patient as defined under this Act has estate in British Columbia, the Lieutenant Governor in Council may appoint the person who is charged with the duty of managing, handling, administering or caring for the estate of that person in that province to be the committee of the estate of the person in British Columbia.

(2) The order in council making an appointment under subsection (1) is conclusive evidence that all conditions precedent to the appointment have been fulfilled.

(3) Every person appointed a committee under subsection (1)

(a) has as committee in respect to the estate of the person in British Columbia the same rights, powers, privileges and immunities as are conferred by this Act on the Public Guardian and Trustee as committee of a patient in British Columbia, and

(b) is subject to the same obligations and must perform the same duties and this Act applies to the person in the same manner as to the Public Guardian and Trustee acting as the committee of the estate of the person.

(4) All acts of a person appointed committee under this section are binding in all courts and land title offices in the same manner and to the same extent as the acts of the Public Guardian and Trustee acting as the committee of the estate of a patient are binding.