

## PART I: DETERMINE THE NEED

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### *WHAT IS THIS?*

Part I: Determine the Need:

- Describes how adults that may need help managing their finances are identified
- Explains the roles of designated agencies and PGT in the investigation of concerns about adult abuse, neglect and self-neglect or management of finances
- Explains how to identify the beginning of the certificate of incapability process
- Explains how emergency situations are addressed by the PGT and designated agencies

This is important because...

The first step in what could become the certificate of incapability process is identifying that an adult needs help managing their finances. This need is identified in one of two ways – either through an investigation by the PGT or by health authority staff conducting an assessment for the provision of health services or an investigation in their role as a designated agency.

At any point in the certificate of incapability process, emergency situations may arise that may require the health authority or PGT to provide emergency assistance. Because protective measures by the PGT can only be in place for a total of 120 days, both components of the assessment may need to be expedited to ensure that a certificate can be issued before the 120 days expires.

### *RELATED LEGISLATION NOTED*

- *Adult Guardianship Act*
- *Public Guardian and Trustee Act*
- *Representation Agreement Act*
- *Power of Attorney Act*



### *RELATED FORMS*

There are no forms referenced in Part I.

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## DETERMINATION OF NEED

### REFERRAL AND INVESTIGATION

The first step in what could become the certificate of incapability process is identifying that an adult needs help managing their finances. This need is identified in one of two ways, either through an investigation by the PGT or by health authority staff conducting an assessment for the provision of health services or an investigation in their role as a designated agency.

Investigations are typically initiated as a result of a report or concern made to a designated agency or the PGT. The reports may come from family members, friends, members of the public, health and social service providers, care facilities or financial institutions.

The regional health authorities, Providence Health Care Society and Community Living BC are designated agencies under Part 3 of the AGA. As designated agencies they investigate concerns about adult abuse, neglect and self-neglect to determine if the adult is in need of and can seek support and assistance. During such an investigation, concerns may arise about the adult's ability to manage their finances. In these cases, the designated agency may contact the PGT to take steps to protect the adult's assets or to investigate whether the adult is incapable of managing finances and whether there is anyone able to act on the adult's behalf. It is important to note that some situations of abuse and neglect are criminal offences under the *Criminal Code of Canada* and police may also be involved.

The PGT conducts investigations into a report or concern if the PGT has reason to believe that the adult may be mentally incapable of managing their financial affairs, there is a specific, urgent or immediate need (i.e., the adult's assets are at risk) and there is no other suitable person (family or friend) who has the authority or is willing and able to act on the adult's behalf. To determine whether a concern/report meets the PGT criteria for an investigation, the PGT Regional Consultant may call the referring party and involved health authority staff and/or other health and social service providers to informally gather information.

### DESIGNATED AGENCY AND PGT INVESTIGATIONS

During their separate investigations, health authorities as designated agencies and the PGT engage in similar activities despite having differing investigation focuses and authority. The important thing to keep in mind for the purpose of this Guide is that:

- Either investigation may identify a need to pursue a certificate of incapability
- Either investigation may be ongoing during the certificate of incapability process

Designated agencies have authority to conduct abuse and neglect investigations and to collect information for that purpose. This authority includes interviewing the adult's spouse, family members, friends or anyone else who may assist in obtaining any information required including a report from a health care provider who has examined the adult, any agency that provided health or social services to the adult and any person that manages the adult's financial affairs. *[AGA s. 48(2)]*  
In conducting investigations, designated agencies are required to make every reasonable effort to interview the adult. *[AGA s. 48(1)]*

In cases where a detailed examination of finances is required, the health authority is likely to make a referral to the PGT. While a designated agency might seek confirming financial information during an investigation to substantiate a concern, the PGT has broader authority to obtain financial records including:

- Asking the substitute decision maker for an accounting of the adult’s assets, income and expenses
- Requesting information and records about the adult’s finances from a bank, credit union or investment advisor

The PGT has authority to investigate the affairs of an adult who does not have a representative, an attorney under an enduring power of attorney or a committee and is apparently abused or neglected. *[PGT Act s. 17]* The PGT also has authority to investigate the affairs of an adult if the adult has a representative, trustee, attorney or a committee of estate and the PGT has reason to believe that the assets of the adult may be at risk, or that the representative, committee of estate, attorney or trustee has failed to comply with their duties.

The PGT’s authority to collect information includes: *[PGT Act s.18]*

- Requiring the trustee, attorney, representative or committee to produce any accounts, securities or other records
- Requiring a person, institution or other body having records relating to the financial affairs, business or assets of the young person or adult to produce any accounts, securities or other records the PGT considers necessary for the investigation or audit, including any report or information relevant to the incapability of an adult

Both the PGT and health authority staff who receive a report are required to protect the identity of the person who made the report and are prohibited from disclosing the identity of a person who makes a report. *[AGA s. 46(1), [PGT Act s. 17(3)]*

## INVESTIGATION OUTCOMES

The majority of PGT and designated agency investigations are resolved without the PGT obtaining authority to manage the adult’s affairs. Sometimes though, a certificate of incapability is the only or best solution to the adult’s situation.

Possible outcomes of a PGT and/or designated agency investigation include a determination that the:

- Adult is capable and the investigation ends
- Adult is able to make an enduring power of attorney or a s.7 Representation Agreement naming someone to assist with managing their affairs
- Adult is not capable but informal supports to assist are sufficient
- Adult is referred to available health care, social, legal, accommodation or other services
- Substitute decision maker (representative, attorney) is complying with their duties and can continue making financial decisions for the adult

- Substitute decision maker is not complying with their duties and the adult or the adult's assets are at risk, but someone close to the adult takes steps to obtain authority to manage the adult's affairs which may require an application to court
- Designated agency may consider other more formal legal remedies to keep the adult safe
- Various alternatives have been exhausted and the only workable solution seems to be for the PGT to act as the adult's committee of estate, appointed through the certificate of incapability process

For more information about how the PGT or health authorities as designated agencies conduct investigations, see Appendix C Contact Information.

### BEGINNING OF THE CERTIFICATE OF INCAPABILITY PROCESS

Contact and consultation between the PGT and the health authority may occur at any point during an investigation and is encouraged at the earliest point possible if either party believes a certificate of incapability may be the best resolution to the adult's situation. The PGT and the health authorities should consult and come to an understanding about the beginning of the certificate of incapability process.

When the certificate of incapability process is being initiated, the health authority and PGT can determine how the required assessment components will be done and who will be coordinating with the physician and QHCPs. Some considerations include:

- Who will conduct the medical exam (i.e., the adult's GP or a specialist)?
- Who is the lead QHCP within the health authority?
- Who will conduct the functional component?
- Is it necessary for a physician to do both components?
- What further collateral information is needed, and who will try to collect it?

It is generally recommended that the PGT and health authority consult before arranging for any components of the assessment to be conducted for the purposes of a certificate of incapability. However, procedures may vary according to health authority or circumstance of the adult. As part of this process, it is essential to ensure that all legal requirements are met, that all information is considered, and that no other options for resolution have been overlooked (See Appendix B - Options to Consider).

### EMERGENCY PROVISIONS

The PGT or health authority may encounter situations where they have reason to believe that the adult is in serious physical danger, or serious risk of emotional harms, or their financial affairs, businesses or assets are at risk and in need of immediate protection. Two different acts give different powers to both the PGT and health authorities to address these situations.

The health authorities have the authority to provide emergency assistance if the adult is apparently abused or neglected and it is necessary to act without delay in order to preserve the adult's life, prevent serious physical or mental harm to the adult or protect the adult's property from significant damage or loss and the adult is apparently incapable of giving or refusing consent. *[AGA s. 59]* Steps a health authority may take include asking for the assistance of the police in entering any premise

where the adult is located, removing the adult from the premises, providing the adult with emergency health care, and informing the PGT that the adult's financial affairs are in need of immediate protection.

The PGT has the authority to take steps to temporarily safeguard an adult's assets. *[PGT Act s. 19]* This may include stopping withdrawals from a bank account or halting the sale of property. It is important to be aware that any protective measures put in place by the PGT can only be in place for a total of 120 days in order to provide time to resolve the issue or put a permanent solution in place (protective measures can be exercised for up to 30 days and may be renewed three times).

If the only or best solution to the adult's situation is to pursue a certificate of incapability, both components of the assessment may need to be expedited to ensure that a certificate can be issued before the 120 days expires. In these cases, the PGT and the health authority work together to expedite the certificate of incapability process, while ensuring the required assessment processes for a certificate of incapability are followed.