

# Practice guidelines for incapability assessments

For the purposes of the Adult Guardianship Act Part 3:  
Support and Assistance for Abused and Neglected Adults  
and the Adult Guardianship (Abuse and Neglect) Regulation

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# Approval of the Public Guardian and Trustee

These Practice Guidelines for Incapability Assessments are approved for the purposes of Part 3 of the Adult Guardianship Act, R.S.B.C.1996 c.6 and the Adult Guardianship (Abuse and Neglect) Regulation, B.C. Reg. 13/2000, and by BC Reg. 13/2011.

Please note that these guidelines supersede the guidelines dated February 28, 2000, March 17, 2000, February 5, 2001, and September 1, 2011.

## **Dana Kingsbury**

Public Guardian and Trustee

## Acknowledgments

The original version of these guidelines was produced by the Incapability Assessment Steering Committee in collaboration with the Public Guardian and Trustee of British Columbia and the Ministry of Health. The members of the original Incapability Assessment Steering Committee are listed in **“Appendix F” on page 26**.

We wish to thank the many individuals and organizations who participated in the development of this document through consultation forums and written feedback.

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# Overview of the practice guidelines

## What are practice guidelines?

These practice guidelines describe the process of doing incapability assessments within the context of Part 3 of the Adult Guardianship Act - Support and Assistance for Abused and Neglected Adults (AGA Part 3) when a designated agency is intending to apply for a Support and Assistance Order from the Provincial Court.

They describe best practices based on clinical evidence and expert opinion, and reflect the guiding principles of the Adult Guardianship Act (the AGA).

Assessors are required by the Adult Guardianship (Abuse and Neglect) Regulation section 3(2) to conduct assessments in accordance with these guidelines.

See **“Appendix A” on page 20** for a flow chart of the Incapability Assessment Context and Process.

### 1. Who will use this guide?

These practice guidelines are primarily intended for use by assessors authorized by the Public Guardian and Trustee (PGT) to conduct incapability assessments in situations of adult abuse, neglect or

self-neglect. The assessments are requested by a Designated Agency Key Contact/Adult Guardianship Lead (DA Key Contact/AG Lead) prior to making an application to court for a support and assistance order under s. 54 of the AGA. Therefore, these guidelines may also be useful to staff of designated agencies who conduct investigations and offer support and assistance.

### 2. Guide structure and content

Following the Overview and Introduction, these guidelines are organized into three parts – pre-assessment, assessment interview, and post-assessment.

### 3. Points to note

Much of the content of the Guide is drawn directly from the Adult Guardianship Act (AGA) and the Adult Guardianship (Abuse and Neglect) Regulation. Direct references to each of these are noted at the end of a sentence, paragraph or series of bulleted statements in the form [Act section (subsection)] for example: [AGA s. 44].or [A&N Reg. s. 2]. Generally, this content is near the beginning of each section wherever possible, followed by additional best practices.

For those readers who wish to confirm the specific wording in the legislation, use these links: [Adult Guardianship Act](#) and [Adult Guardianship \(Abuse and Neglect\) Regulation](#).

### 4. Acronyms

<b>AGA</b>	Adult Guardianship Act
<b>AGA Part 3</b>	Part 3 of the Adult Guardianship Act: Support and Assistance for Abused and Neglected Adults
<b>A&amp;N Reg.</b>	Adult Guardianship (Abuse and Neglect) Regulation
<b>DA</b>	Designated Agency
<b>DA Key Contact/AG Lead</b>	Designated Agency Key Contact/Adult Guardianship Lead
<b>PGT</b>	Public Guardian and Trustee of British Columbia
<b>SAP</b>	Support and Assistance Plan
<b>FOIPPA</b>	Freedom of Information and Protection of Privacy Act

**5. Roles**

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**Adult** An adult is anyone who has reached 19 years of age who is subject to an incapability assessment as a result of being in a situation of abuse, neglect and/or self-neglect, is unable to seek support and assistance on their own, and is not accepting a support and assistance plan.

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**Support person** A support person’s role in an assessment is to be supportive of the adult and to assist with communication in the assessment process.

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**Designated agency** A designated agency is a public body, organization or person designated by regulation by the PGT for the purposes of AGA Part 3.

The designated agencies in B.C. are the five regional health authorities, Providence Health Care Society and Community Living BC (CLBC) for adults who are eligible for CLBC services.

Designated agency staff respond to reports of abuse, neglect and self-neglect under AGA Part 3 by conducting investigations, and offering support and assistance. On occasion, they may use additional legal remedies for keeping an alleged abuser away, gaining access to the adult or applying to the court for a Support and Assistance court order.

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**DA Key Contact/AG Lead** The designated agencies all have a DA Key Contact/AG Lead, each of whom supports their respective organization to fulfill their legal mandate as a DA by providing consultation, professional development and policy direction.

DA Key Contacts/AG Leads are consulted by other DA staff on the use of many of the legal remedies in AGA Part 3 noted above, and are the people responsible for asking the PGT to authorize assessors.

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**Public Guardian and Trustee** Under AGA Part 3 the PGT is responsible for authorizing assessors to conduct incapability assessments.

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## 6. Definitions

**Abuse** means the deliberate mistreatment of an adult that causes the adult physical, mental or emotional harm; or damage or loss in respect of financial affairs, and includes intimidation, humiliation, physical assault, sexual assault, over-medication, withholding needed medication, censoring mail, invasion or denial of privacy or denial of access to visitors [AGA s.1].

**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, physical, mental or emotional harm or substantial damage to or loss of assets and includes self-neglect [AGA s.1].

**Self-neglect** means any failure of an adult to take care of [themselves] that causes, or is reasonably likely to cause within a short period of time, serious physical or mental harm or substantial damage to or loss in respect of the adult's financial affairs, and includes:

- Living in grossly unsanitary conditions
- Suffering from an untreated illness, disease or injury
- Suffering from malnutrition to such an extent that, without intervention, the adult's physical or mental health is likely to be severely impaired
- 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 suffering from an illness, disease or injury that results in the adult dealing with [their] financial affairs in a manner that is likely to cause substantial damage or loss in respect of those financial affairs [AGA s.1]

**Support and assistance plan (SAP)** means a plan developed under s.51(1)(g) of the Act - a plan developed by designated agencies, specifying the type of support and assistance that is to be provided to the adult if an investigation reveals that an adult is abused, neglected, or self-neglected. The plan is developed with the involvement of the adult [AGA ss. 52 and 53(3)].

**Support and assistance court order** is an order made by the Provincial Court upon application by a

DA for an adult to receive support and assistance without their consent if the court is satisfied that the adult is abused, neglected or self-neglecting, is unable to seek support and assistance because of an illness, injury or other condition that affects their ability to make decisions about the abuse or neglect, and needs and would benefit from the services proposed in the SAP [AGA s. 56(1)]

**Assessment** means an assessment of whether an adult is incapable of deciding not to accept the services proposed in a SAP [A&N Reg s. 1].

**Assessor** means a person authorized by the PGT to do an assessment [A&N Reg s. 1].

## Guiding principles

The Adult Guardianship Act s. 2 provides that the Act is to be administered and interpreted in accordance with the following principles:

- All adults are entitled to live in the manner they wish and to accept or refuse support, assistance or protection as long as they do not harm others and they are capable of making decisions about those matters
- 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
- 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

The Adult Guardianship Act s. 3 provides that:

- 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
- An adult's way of communicating with others is not grounds for deciding that they are incapable of making decisions about these matters

# Introduction

## Principles to guide the assessment process

The foundation and philosophy of these guidelines and the processes involved are based on the desire to provide a respectful and effective method to respond to adults who are living in some of the most extreme and often life threatening situations of abuse or neglect and who are unable to seek support and assistance. This legislation is person-centered and guided by a human rights approach to understanding and assessing incapability. The following principles are an extension of the guiding principles of the AGA:

1. Incapability assessments are undertaken only as a last resort
2. Incapability assessments are unnecessary if there are alternate ways of adequately meeting the adult's needs
3. Incapability assessments are undertaken only if the assessment will serve the interests of the adult
4. An adult has the right to be informed of the intention to conduct an incapability assessment and to be informed of the outcome of the assessment
5. Incapability assessments begin with the presumption that the adult is capable of making decisions
6. An incapability assessment is a process, ideally conducted by a team, in consultation with the adult and those who are supportive of the adult
7. Incapability assessments are concerned solely with the adult's decision to not accept the SAP
8. A capable adult has a right to make decisions about support and assistance plans, and must not be assessed as incapable solely because others disagree with the adult's decisions
9. Incapability assessments are conducted fairly, recognizing the adult's unique personal circumstances, and demonstrate respect for the adult

10. Incapability assessors respect and protect the adult's privacy, self-esteem and well-being

## When is an incapability assessment done?

In B.C., the five regional health authorities, Providence Health Care Society, and CLBC are designated and therefore have a legal mandate under AGA Part 3 to respond to reports or situations of adult abuse, neglect or self-neglect they become aware of. DA staff receive and respond to reports for adults who cannot seek assistance on their own, informally offer support and assistance, formalize a SAP if necessary, and may at times need to use legal remedies to assist an adult. These include three ways of gaining access to an adult, obtaining restraining orders, and on occasion, applying to the court for a Support and Assistance Court Order if numerous ways of informally offering supports have not been accepted by the adult.

DA staff and the DA Key Contact/AG Lead consider formalizing a SAP if informal assessments indicate the adult may not be capable of understanding the services, reasons, and consequences of not accepting the SAP and is refusing to accept it.

If the adult decides not to accept the services proposed in the SAP and the adult appears to be incapable of making that decision, the DA may ask the PGT to arrange for an assessment of whether the adult is incapable of refusing the SAP [AGA s. 53(5)]. (This occurs in relatively few situations compared to the overall number of reports to a DA and only after DA staff have worked with an adult to understand their situation, endeavoured to offer various supports that would mitigate the risk, and been unsuccessful at offering supports that an adult will accept.)

An incapability assessment is arranged when a DA is planning to apply to court for a Support and Assistance Court Order under s. 54 of the AGA because an adult has been offered and not accepted a less formal SAP and they are at grave risk due to a physical disability, physical restraint or an illness, disease, injury or other condition that limits that adult's ability to seek support and assistance [AGA s. 44].



Prior to asking for an incapability assessment, the DA determines if the adult has a substitute decision maker (SDM). An SDM may be able to provide relevant information and/or have the legal authority to make some decisions on behalf of the adult. The SDM could be:

- A representative under a Representation Agreement made according to the Representation Agreement Act - an adult may have given a representative the authority to make routine financial and legal [s. 7 RA] and/or personal and health care decisions [s. 7 or 9 RA]
- An attorney under an Enduring Power of Attorney made according to the Power of Attorney Act - an adult may have given an attorney the authority to make decisions about some or all of the adult's finances and legal matters
- A temporary substitute decision maker (TSDM) appointed by a health care provider to make a health care decision they are proposing to an adult whom they are of the opinion is incapable of making the decision under the health care consent provisions or a substitute decision maker (SDM) appointed by a manager to make a facility admission decision for an adult assessed as incapable of making an admission decision under the care facility admission provisions of the Health Care (Consent) and Care Facility (Admission) Act
- A committee acting under the Patients Property Act - the Supreme Court may have appointed a committee of estate to manage the adult's financial and legal affairs and/or a committee of person to make the adult's personal and health care decisions

The DA Key Contact/AG Lead may request an assessment for a variety of reasons:

- There are no eligible or qualified SDMs
- The SDMs do not have authority over all of the decisions proposed in the SAP
- The Mental Health Act is not applicable
- A Support and Assistance Court Order is considered the most appropriate means of meeting the adult's needs

The DA Key Contact/AG Lead asks the PGT to arrange for an incapability assessment when the adult:

- is in a situation of abuse, neglect or self-neglect;
- has not accepted the services proposed in the SAP;
- appears to be mentally incapable of making that decision; and
- obtaining a court order to provide the support and assistance will likely significantly improve the situation, i.e. none of the options noted above are available or workable.

Designated Agencies only request assessments when an adult has not accepted the services in a SAP and the DA has concerns that the adult is incapable of making this decision to not accept the services. If the adult appears to be capable of making decisions and is not willing to accept assistance, the decision is respected.

### Who does assessments?

On being asked by a DA to arrange for an assessment, the PGT may arrange for the adult to be examined by a team of assessors, or one assessor if, because of geographic location or other special circumstances, it is not reasonable in the PGT's opinion to require a team of assessors [A&N Reg. s. 2(1)].

Ideally, assessments are conducted by a team of two assessors authorized by the PGT. If, in the opinion of the PGT, it is not reasonable to use a team of assessors due to geographic location, timeliness or other special circumstances, the PGT may arrange for only one assessor. Wherever possible two assessors are authorized who have no affiliation with the adult or the DA that is proposing the SAP.

Assessors are authorized based on:

- Qualifications and training
- Experience and skill in conducting psychosocial, cognitive, functional and/or mental status assessments

- Experience with adults who are in situations of abuse and/or neglect
- A solid understanding of the dynamics of abuse and safety planning
- An understanding of the particular illness, disability, cultural background or situation affecting the adult concerned
- Ability to conduct the assessment objectively
- Proximity to where the adult lives
- Being a registered member in good standing with their professional regulator with an approved level of practice insurance if conducting assessments privately
- Their commitment to following these Practice Guidelines [A&N Reg. s. 3(2)]

If the adult rejects the SAP and the DA is concerned that the adult may not be capable of making that decision, the DA sends the PGT a request to authorize assessors along with the final version of the SAP that was rejected by the adult.

The DA Key Contact/AG Lead provides the PGT with:

- Information about the adult’s situation
- What has been tried or considered and ruled out
- The adult’s involvement in the development of the SAP
- The particular needs and circumstances of the adult during the assessment process
- Confirmation of the DA’s intention to go to court for a Support and Assistance Court Order

Where possible, assessors are selected to a team to reflect complimentary expertise related to the adult’s situation. Upon selecting assessors and confirming insurance coverage and fees, the PGT emails an authorization letter to the assessors informing them of who they will be working with. A copy of the final SAP and these guidelines is provided.

The assessors discuss how they will work together as a team to complete the assessment. Factors to consider in working together include:

- The extent to which interviews will be completed individually and as a team
- Who will collect collateral information
- Whether they intend at the outset that there will be one or two assessment reports (this could change later on if they do not come to the same determination)

Assessors decline to do an assessment if they believe for any reason that they are unable to conduct the assessment objectively.

If the adult or the adult’s supporters disagree with who has been selected to do the assessment, they can discuss their concerns with the PGT.

### **What is the focus of an assessment?**

Incapacity assessments are guided by the guiding principles in the Act and the additional principles outlined on page 5 of these guidelines.

They begin with the presumption that the adult is capable of making decisions [AGA s. 3]. An incapacity assessment has a significant impact on an adult’s self-esteem and personal rights. By starting with a presumption of capability, assessors reduce the bias that may be caused by any preconceptions concerning the adult’s incapability.

The purpose of the assessment is to determine whether the adult is incapable of not accepting the SAP (AGA s. 53(5)).

When deciding whether the adult is incapable, an assessor must base the decision on whether the adult understands (a) the services described in the SAP, (b) why the services are being offered to the adult, and (c) the consequences to the adult of not accepting the services [A&N Reg. s. 3(4)].

An adult must understand all three – the services, reasons and consequences – to be assessed as capable of not accepting the SAP.

Understanding must be evaluated within the context of the adult’s values, beliefs and historical preferences.

## The assessment process

The assessment process includes:

- Consultation and collection of written and verbal collateral information about the adult's situation as it relates to their possible incapability to not accept the SAP – this includes medical and psychosocial assessments, information from health and social services providers and others supportive of the adult
- Interview(s) with the adult during which the assessors asks them questions specific to their understanding of the SAP
- An analysis and determination by the assessors of whether the adult is incapable of not accepting the SAP

## Part I: The pre-assessment interview phase

### Preparing for the assessment interview

#### Getting oriented to the adult's situation

Upon being authorized by the PGT, the assessors review the SAP. It must be the final and dated version of the SAP that forms the basis for both the assessment of incapability and the application for a Support and Assistance Court Order. While there may be some variation in the content and look of SAPs from the various designated agencies to support their unique internal operations, at a minimum they include the following:

- A description of the services that have been offered to the adult which may include health care, accommodation, social, legal or financial services
- Why the services are being offered to the adult
- The consequences to the adult of not accepting the services, from the perspective of the DA
- A description of how the SAP was explained to the adult and whether anyone else was present to assist

- The adult's reaction to the SAP – what they disagree with or do not appear to understand
- Information about other more effective and less intrusive and restrictive supports/services that have been tried or carefully considered prior to the final SAP that the adult has not accepted

The DA that asked for the assessment must (a) allow an assessor to examine any records relevant to the assessment, and (b) provide any other assistance that is requested by an assessor and is necessary for completing the assessment [A&N Reg. s. 2(2)].

Based on this ability to access relevant information, following their review of the SAP, the assessors contact the DA Key Contact/AG Lead for further written medical and psychosocial assessments/information about the adult, their situation, how best to reach them, any suggested support person that could be present at the assessment interview, and information about who to consult with about the assessment. This is a targeted list of those who have the most relevant information for the purposes of the assessment; it may include the adult's spouse, near relatives, friends, and/or key health and social service professionals.

#### Planning the initial visit

After obtaining this additional information from the DA Key Contact/AG Lead, the assessors plan the initial visit. The objective of the initial visit is to begin the process of getting to know the adult, to identify any potential safety concerns, and to respond to questions and concerns that the adult may have about the assessment process.

The assessors, in consultation with the adult, supportive family, friends and advocates, and the referring DA Key Contact/AG Lead, determine:

- How to best contact the adult (e.g., telephone, through a relative or friend)
- What the adult would like in order to be prepared and comfortable for the initial visit
- If the adult wishes to have a support person present when the first contact is made

- What the best time of day to see the adult is (e.g., the time of day when the adult is likely to do their best, when the person suspected of abusing or neglecting the adult is away from the house/facility)
- Where the initial visit will take place
- The team members who should be present at the initial visit

### **The initial visit**

When an adult is being assessed, at least one assessor must inform the adult that an assessment is being done and must explain the purpose [A&N Reg. s. 3(1)].

The assessors make the initial contact with the adult and:

- Begin to develop rapport
- Ensure that the adult is given an opportunity to give their perspective on the events or issues that led to the request for the assessment
- Discuss the reason for the assessment and what will be involved
- Inform the adult that an assessment is being done and explain the purpose and possible outcomes
- Consider any safety concerns that may result from the visit and ensure an adequate safety plan is in place

This may require more than one visit.

### **Impact of the adult's health and social circumstances**

The assessors are alert to factors that may contribute to fluctuating levels of understanding (e.g., the adult's medical condition, medication, substance use). If they determine that the adult's level of understanding may be fluctuating due to unexplained, unexplored, previously unrecognized or remediable factors, they will interrupt the assessment process and report the situation to the DA Key Contact/AG Lead. The DA refers the adult to a health care provider and advises the assessors and the PGT whether or not the assessment should continue.

If the assessors discover anything in the course of the assessment that affects the SAP or a significant change has occurred in the adult's circumstances, they consult with the DA Key Contact/AG Lead. The SAP may be revised by the DA and discussed with the adult to see if the adult will accept the assistance as it is now being offered. Where a change is made, and as a result, if only a longer term restraining order is being pursued, (in which case an incapability assessment is not required), the assessment ends and the assessors advise the PGT [AGA s. 54(4)].

### **Communication**

An adult's way of communicating with others is not grounds for deciding that they are incapable of making decisions about these matters [AGA s. 3(2)].

The assessors address any known communication issues prior to beginning the assessment process. The assessors will also document and address any communication issues that arise after the assessment is underway.

The assessors consider the adult's mode of communication and determine whether:

- An interpreter is required
- The adult uses sign language
- The adult uses alternate or augmentative communication
- The adult requires adaptations to communication related to intellectual or educational level
- The support person is available to help communicate with the adult

The assessors communicate with the adult in a manner that is respectful and appropriate to the adult's skills and abilities including educational and intellectual background. Assessors keep in mind that the adult may be reluctant to ask questions or ask for clarification for a variety of reasons. For example, the adult may be concerned about looking 'stupid', feel intimidated by the assessors' power in the situation, and/or be fearful about potential backlash from someone responsible for the abuse if they are too forthcoming. It must also be noted

that the backgrounds of the adult and the assessor may affect communication. Being aware of these issues and taking steps to enhance communication will decrease the possibility of miscommunication.

To help the adult understand during the assessment interview(s), the assessors continue to be alert to whether there is a need to enhance communication through:

- Support materials
- Alternative communication techniques
- Changing the environment in which the dialogue is occurring
- Enlisting others, for example friends or family members, who are familiar with the adult's manner of communication
- Using a professional interpreter

For people who use alternative or augmentative communication, the most important resource is someone who understands the communication system used by the adult.

In determining possible communication strategies, it is important that the assessors seek input from the adult as to what might be useful.

**“Appendix B” on page 21** provides additional information on factors and barriers affecting communication and includes suggestions on how to enhance communication.

## Telling the adult about the assessment

When an adult is being assessed, at least one assessor must inform the adult that an assessment is being done and must explain the purpose [A&N Reg. s. 3(1)].

At the onset of the first meeting, the assessors must explain the assessment process to the adult and their supporters in a manner that is congruent with the adult's communication skills and abilities. If the adult does not object to the assessment this is sufficient for the assessment to proceed.

It is preferable to have the adult's cooperation; the assessors are sensitive to the adult's reaction to being assessed. The assessors must explain to the adult:

- That an assessment will be done
- The reasons why the assessment is being done (e.g., concern for risk to life)
- That the purpose of the assessment is to determine whether the adult is incapable of making the decision to not accept the services offered in the SAP
- How the assessment is to be done (e.g., asking questions of the adult and consulting with others)
- Who the assessors are
- Who the assessors may be talking to during the course of the assessment
- What may happen after the assessment is complete

It is important that the adult be told that if the assessment indicates that the adult is capable, their wish to not accept the SAP must be respected. If the adult is assessed as not capable, the DA may apply to court to provide the services set out in the SAP. The adult is also told that if the DA applies to court, the adult will receive notice of the application and information about how to access legal counsel.

The DA Key Contact/AG Lead liaises with the assessors on any issues that may arise during the assessment of incapability process. Sometimes an adult will accept a SAP once they realize the intention to have it ordered by the court is imminent. At other times the DA Key Contact/AG Lead may decide that the assessment should proceed despite the adult's agreement because the adult has a history of agreeing to the SAP and then changing their mind, or because even though the adult is in agreement with the SAP, the alleged abuser will not allow it to be implemented.

The assessors pay special attention to:

- Identifying any specific questions the adult has or any concerns about the assessment that are upsetting to the adult

- Determining whether the adult seems to be understanding the information provided regarding the reason for the assessment, the role of the assessors, and the possible outcomes of the assessment process
- Ensuring that the adult feels that their concerns and interpretation of the information provided by the DA as the reason for the assessment have been adequately heard
- Confirming whether the adult understands that they can have a support person present

If the adult objects to the assessment, the assessors consider:

- The reasons the adult is declining to participate and how, or if, these can be addressed
- Requesting the assistance of supportive family, or friends (including caregivers) in communicating the need for the assessment to the adult
- Returning at another time or arranging for the assessment to be done in another location
- In consultation with the DA Key Contact/AG Lead, whether or not to go ahead with the assessment without the adult's consent

If the adult consistently objects to the assessment, the assessment can proceed using observational and collateral information from other sources if the assessor reasonably believes the assessment would be accurately completed by doing so [A&N Reg. s. 3(3)] (see **“Completing the assessment if the adult objects” on page 14**).

## Where the assessment should be done

Choosing the location where the assessment will take place should be done in consultation with the adult, the adult's supportive family, friends and the DA Key Contact/AG Lead. Two issues help guide this decision: attending to safety - the adult's and the assessors', and selecting an environment that will optimize the adult's performance.

Especially in situations of abuse, attention must be paid to ensuring the adult's safety both during and after any meetings. Important factors to consider include:

- Where will the alleged abuser be during the process?
- Will there be opportunity to interview the adult privately without the alleged abuser overhearing?
- Is a safety plan necessary to ensure the adult is safe following any meetings - if so, what will the plan be?

The second issue associated with selecting a location is maximizing the adult's performance. Typically this means selecting an environment that is familiar to the adult, comfortable, and facilitates a sense of control for the adult - often this is the adult's home but only if safe. If elsewhere, attention is paid to finding somewhere that is private, comfortable (including attending to seating, lighting and ventilation) and physically accessible to the adult.

The assessors include or exclude the alleged abuser from the process in a manner that keeps the adult and the adult's supporters safe. If concerned that the adult, the adult's supporters, or the assessors are at risk, the assessors notify the DA Key Contact/AG Lead.

## Support of family and friends

### Choice of support person

The support of family and friends can be an essential aspect of the assessment process. Unless the adult objects, an assessor may allow a family member or friend of the adult to be present during the assessment to assist with communication [A&N Reg. s. 5]. The role of this support person is to provide support to the adult so that they are more at ease, to help the assessors communicate with the adult, and potentially to provide the assessors with background context that may help the assessors better understand the adult's responses.

If there is a dispute between family and friends supporting the adult over who should be present during the assessment, the assessors, in consultation with the adult, choose the person who can best help with communication and/or be the best support to the adult. If the adult indicates

they do not want a particular support person to accompany them, these wishes must be honoured, regardless of the support person's reaction to the request.

The assessors may need to use discretion when a support person is exhibiting undue influence and possibly decide the support person should not be present at all, or should only be present for part of the time, or consider involving a different support person.

Ideally, support is consistently provided by the same person throughout the duration of the assessment process. If the adult requests a change in support arrangements, the assessors accommodate the request if reasonable to do so.

If the adult objects to having any support person present, the assessors discuss the reasons behind the adult's objections and will respect the adult's final decision.

Decisions related to support persons are clearly documented with the rationale for the decision.

### **Use of interpretation services**

Where an adult's first language is not English, and the assessors are not proficient in the adult's first language, the assessors may decide it is necessary to have an interpreter present for the assessment. Best practice is to engage an interpretation service where possible or a person who understands the adult's form of communication. If, due to the highly specialized means of communication of the adult, the only option is to rely on a family member or other person known to the adult, it is important for the assessors to be assured that the support person understands that their role is to convey the information to the adult (e.g., clarifying questions as necessary) and to repeat the adult's responses to the assessors without adding their own opinions.

### **Role clarification prior to the assessment interview**

If the adult has a support person, the assessors may consider meeting with this person prior to the assessment interview. When considering this meeting, the assessor balances the potential

usefulness of any information obtained against potential threats for undermining the adult and/or the trusting relationship between the assessor and the adult.

A meeting between the support person and the assessors can help to discern:

- The adult's reaction to being assessed and whether this will affect communication
- The best way to ask or pose questions to the adult (e.g., the use of repetition, breaking the question into parts)
- The adult's characteristic responses and what they mean (e.g., eye blink responses); in other words, how the adult communicates their understanding
- The role of the support person during the assessment

The focus of the discussion between the assessors and the adult's supporter is on how the adult communicates understanding, not on the actual assessment questions

The assessor is always responsible for asking the questions during the assessment. The role of the support person is to help the assessors to communicate with the adult, and not to answer for the adult.

If an interpreter is needed, including them in this meeting or orienting them to their role during the assessment interview is advisable as well.

## **Consultation**

### **Who to consult with**

The purpose of consultation by the assessors is to obtain written and/or verbal information (collateral) from people close to the adult and others who have provided services to the adult to appropriately inform the assessment and the assessment process.

In the course of an assessment, at least one assessor must consult with the following people

if they can provide accurate information relevant to the assessment:

- The adult's spouse, if the spouse has been in contact with the adult during the preceding 6 months and has no dispute with the adult
- Available near relatives and friends of the adult if they (i) are at least 19 years of age, (ii) have been in contact with the adult during the preceding 12 months, and (iii) have no dispute with the adult
- Any person who has provided the adult with social services in the preceding 6 months
- Any person who has provided the adult with health care in the preceding 6 months [A&N Reg. s. 4]

Contacts for the assessors to connect with or seek information from are primarily provided to the assessors by the DA Key Contact/AG Lead and the adult. It is helpful to the assessors to know who is in the adult's network, with a recommendation about who to speak with.

The assessors only consult on issues relevant and specific to the assessment of incapability.

Assessors can use discretion and reserve the right to consult others in addition if they have a reason to believe they can provide accurate information that is relevant to the assessment. The adult may suggest someone not on the DA Key Contact/AG Lead list. They may decide that speaking with someone under the age of 19 is advisable, even though it is not required. Or they may decide they do not need to speak to all family members, but only those who bring different perspectives.

Assessors also use their discretion when deciding whether to consult with a person who has a dispute with the adult. The decision as to whether or not to consult with this person is based on the following:

- The adult requests that the assessors consult with this person
- The assessors have reason to believe that this person may have important insights and they

believe that speaking to this person will not place the adult in any risk

- The assessors have reason to believe that consulting with this person may foster a less intrusive action for meeting the care needs of the adult

A person is considered to have a dispute with the adult if the person is:

- suspected of abusing or neglecting the adult; or
- in conflict with the adult (e.g., involved in a protracted family disagreement that affects the person's ability to act in the adult's best interest); or
- involved in legal action against the adult.

Information from a suspected abuser who has a vested interest in the outcome is treated with caution.

### Collection and use of collateral information

Best practice is to ensure that information is collected from collateral sources about the presenting problem and specific identified concerns prior to the assessment so that the assessment is focused on the relevant issues. The questions asked of collateral sources are dependent on the nature of the problems identified and what will assist the assessors to gain insight into the adult's decision making process and level of understanding. Generally, these include:

- Any concerns they have about the adult being able to make the decision to not accept support
- Supports/services or remedies that have been tried to this point in order to address the situation
- Personal, familial or cultural values and beliefs that may be influencing decision making
- What their relationship with the adult is like

Collateral sources are asked to describe what they observe. They may also be asked to give examples of situations where the adult demonstrated



decision-making but assessors must remain aware that although collateral sources may have an opinion, they are not being asked to interpret their observations or form conclusions about possible incapability.

In considering the information provided by a collateral source, it is important that the assessors explore the relationship between that person and the adult, including duration and how well they know the adult.

The assessors inform the adult of the intention to consult with others and provide the names of those who will be consulted, where reasonable.

Subsequent to the assessment interview, the assessors may need to check back with collateral sources to provide further insight into the details that the adult provided.

## Observational information

In addition to collateral information collected in the form of reports and consultation conversations, the assessors' own observations from the point of first contact with the adult are very important to the assessment process as well.

Typically, an assessor observes the adult and takes note of such things as:

- General appearance
- The adult's response to the request for an assessment
- Living conditions
- Behaviour and habits

## Completing the assessment if the adult objects

If an adult refuses to participate in all or part of an assessment, the assessment may be performed using observational information and information gathered from other sources as described above, if the assessor reasonably believes the assessment

would be accurately completed by doing so [A&N Reg. s. 3(3)].

This is not the preferred approach however, and the decision to do this should only be made after a reasonable attempt has been made to gain the adult's cooperation and a comprehensive consultation with the DA Key Contact/AG Lead.

If proceeding, immense care is taken to ensure that sufficient information is collected on which to base a finding. It is important to document the source of the collateral information, along with what is said.

Assessors must, in writing, list the persons with whom the assessor consulted under subsection (1) and record the extent to which they were consulted [A&N Reg. s. 4(3)].

## Pre-assessment checklist

The assessors:

- Consult the DA Key Contact/AG Lead
- Review the SAP and the reasons the adult did not accept it
- Consider the effect of any abuse or neglect on the possible appearance of incapability of the adult:
  - Undue influence
  - Safety issues
  - History of abuse in terms of impact on decision-making (i.e. history of having decision-making skills undermined, discounted or ridiculed)
  - Learned helplessness
- Request detailed records relevant to the assessment
- Review available medical information
- Identify cultural, religious, age, or gender issues that may be influencing how the assessment is carried out and/or how decision-making may be understood

In addition, the assessors maximize the adult's ability to demonstrate capability by determining:

- How best to communicate with the adult
- The people providing support to the adult
- The best environment for the assessment to take place
- Whether there are any effects from medication, physical illness, drug or alcohol dependence on the adult's decision-making ability
- If any comprehension improvement tools or techniques can be used
- The amount of time the adult needs to respond

If at any time the SAP is accepted by the adult, the assessors consult with the DA Key Contact/ AG Lead before proceeding with the incapability assessment. A decision may be made to discontinue the assessment unless there is reason to believe that the adult is not able to follow through on the decision to accept the SAP.

## Collection and disclosure of information

The collection and disclosure of information throughout the assessment process is governed by the Adult Guardianship (Abuse and Neglect) Regulation and by the Freedom of Information and Protection of Privacy Act (FOIPPA). The professional code of ethics of the assessors also provide guidance on the use of information that is collected during the assessment process.

### Requesting information from a designated agency

The assessors are permitted to examine any records held by the DA which are relevant to the assessment [A&N Reg. s. 2(2)(a)]. This would include any medical reports, psychosocial assessments, test results, clinical or hospital records, meeting or case notes or other records as requested by the assessors.

The assessors are entitled to any other assistance from the DA that is necessary for completing the assessment [A&N Reg. s. 2(2)(b)]. This would include discussing the case with DA staff, obtaining contact information for the adult, family or friends, or any other assistance that is requested by the assessors.

The authority for the DA to disclose information requested by the assessors is the A&N Reg. s.2(2) and s.33.1(c), s.33.2(a), (c) and (d) of FOIPPA.

### Consulting with social service and health care providers

Assessors are required to consult with persons who have provided health care or social services to the adult within the last 6 months, if the assessors believe those persons can provide accurate and relevant information [A&N Reg. ss. 4(1) and 4(2)(c-d)].

Consultations may involve persons working for a public body (e.g. for a health authority or a ministry) or private professionals (e.g., a doctor, therapist, or employee of a non-profit society).

Assessors may collect information from a private professional or a public body and a public body's legal authority for disclosure of information requested by an assessor is s A&N Reg. s.4 and s.33.1(c), s.33.2 (a), (c) and (d) of FOIPPA.

### Consulting with the adult's family and friends

Assessors are required to consult with the adult's spouse and with any available (adult) near relatives and friends, if the assessors believe those persons can provide accurate and relevant information. The spouse must have had contact with the adult within the last 6 months and family or friends within the last 12 months [A&N Reg. ss. 4(1) and 4(2)(a) and (b)].

The assessors may collect information from an adult's spouse, family and friends [A&N Reg. s.4].

### Conducting non-participating assessments – when the adult objects

If the adult refuses to participate in all or part of an assessment, the assessment may be performed based on observations and information gathered from other sources, if the assessor reasonably believes, the assessment could be accurately completed [A&N Reg. s. 3(3)].

A non-participating assessment may include the use of information obtained from public bodies or private professionals, and from the adult's spouse,

family or friends, and from any other sources that are considered to be reliable and relevant, including the assessors' observations of the adult's circumstances and functioning.

Assessors may collect information required for a non-participating assessment [A&N Reg. ss. 3 and 4]. A public body may disclose information requested by an assessor as per A&N Reg. s. 4 and s.33.1(c) and s.33.2 (a), (c) and (d) of FOIPPA.

### **Caution in collection and disclosure of information**

Assessors must use best efforts to collect and disclose only relevant and necessary information during an assessment. Professional ethics, including the duty of confidentiality, also dictate assessors' handling of information.

Assessors must be cautious not to disclose any information that has been provided in confidence. For example, if a person has specifically asked to remain anonymous, or has expressed fear of being known to have participated. Assessors should consult with the DA Key Contact/AG Lead if there is any question about disclosing confidential information.

In the course of doing the assessment, assessors may inadvertently become aware of the identity of the person who made the original report to the DA. Assessors must not disclose the identity of a person who has made a report to a DA about an abused or neglected adult and must immediately advise the DA Key Contact/AG Lead.

## **Part II: the assessment interview**

### **Framework for determining understanding**

Each assessment is unique to the adult's specific situation. Standardized, psychometrically valid instruments may be used to supplement the assessment but are not adequate when used in isolation. For one review of the literature on the strengths and weaknesses of some of the most

commonly used instruments as a component of assessing incapability, see [Incapability Assessments - A Review of Assessment and Screening Tools](#) (PDF, 1 MB)

Instead, assessors will engage in a dialogue with the adult to determine whether or not the adult understands the basic information needed to make the decision to not accept the SAP.

The assessors begin by asking a broad general question to gauge the adult's understanding - for example, "can you tell me your understanding of what services and supports are being offered to you and why?" The adult demonstrates understanding when they can spontaneously volunteer an accurate overview of the information contained in the SAP including what services are being proposed, the reasons for the suggested services, and the potential consequences, as identified by the DA, of not accepting the services in the SAP.

If understanding is not clearly displayed at this broad level, it is the assessors' responsibility to ensure that the adult has the information necessary to demonstrate understanding. The details of the SAP must be explained to the adult. This may be done in two ways.

In the first way, the assessor explains the SAP by dividing it into three separate sections: services, reasons and consequences.

- 1. Services:** The assessors explain all the services offered in the SAP, and determine whether the adult understands.
- 2. Reasons:** Next, the assessors explain why the services are being offered and determine whether the adult understands.
- 3. Consequences:** Finally, the assessors explain the consequences to the adult of not accepting the services and determine whether the adult understands that it applies to the adult's personal situation.

In the second way, the assessors explain the SAP by discussing each service separately, covering reasons and consequences at the same time each service is described.

The method selected may depend on the nature of the SAP and any ideas the assessors have of what will work best for the adult.

### **Demonstrating understanding**

An adult demonstrates understanding when the adult:

- expresses, in their own manner of communication, the information that has been given; and
- indicates that this information applies to their own situation.

The following are indicators that may be helpful when determining whether the adult understands the basic information needed to make the decision to not accept the SAP:

- The adult repeats or explains the information in their own words or manner of communication
- The adult gives consistent and unambiguous answers to questions
- Through appropriate questioning, the adult demonstrates understanding of the consequences, as identified by the DA, of not accepting the SAP; If they disagree with these consequences they are able to articulate what these consequences are, why they are not relevant and they can articulate in their own manner of communication, the potential consequence of being wrong in their appraisal of the DA's appraisal of potential consequences
- The adult asks pertinent questions that reflect an understanding of the proposed support being offered, why it is being offered and the potential consequences of not accepting it

### **Context in which incapability is considered**

The assessors must integrate all of the information collected from the adult, other sources and their own observations to arrive at a decision about the adult's incapability to not accept the SAP. The assessors are aware that:

- The presence of a mental illness, developmental disability, physical illness or neuro-cognitive impairment such as a diagnosis of dementia,

does not automatically mean an adult is incapable of making the decision to not accept the SAP

- The adult's way of communicating with others is not grounds for deciding that the adult is incapable of decision-making
- The presence of abuse, neglect or self-neglect does not mean an adult is incapable of decision-making
- The adult may voluntarily incur risk if the adult understands the consequences of making that decision and is not putting someone else in immediate danger
- The issue of incapability is limited to the decision to not accept services described in the SAP

The fact that an adult is incapable of making some decisions such as managing their finances does not mean the adult is incapable of making a decision about the SAP.

See **"Appendix C" on page 22** for additional information on cognitive factors affecting understanding.

If there is disagreement between the two assessors' opinions, they will consult with one another to explore where points of difference lay and find ways to probe further to respond to discrepancies. If the assessors irrevocably disagree with each other about the outcome of the assessment, they will do two separate reports and notify the DA Key Contact/AG Lead and the PGT.

## **Part III: the post-assessment interview phase**

### **Documentation**

The assessors document all stages of the assessment process. **"Appendix D" on page 23** provides a suggested template for documenting the assessment report. Assessors write their reports

knowing that the adult and a supporter present at the interview will receive a copy and that they will very likely be presented to the court.

When writing the report, assessors must include the legal standards that they are using for determining incapability, state their opinion clearly in relation to these standards, and provide the narrative to support their opinion based on these standards. For an assessment of incapability under AGA Part 3, the assessors must comment on the adult's demonstrated understanding of the services, reasons and consequences to not accepting the SAP.

Assessors document facts relevant to the situation in relation to how they may affect understanding. Information to consider includes:

- Medical and/or psychiatric diagnosis and prognosis
- Functional performance
- Cognitive status
- Psycho-social factors
- Cultural beliefs and values
- Risk considerations
- Steps to enhance capability

Assessors must list the persons with whom the assessors consulted and record the extent to which they were consulted [A&N Reg. 4(3)].

Additionally, documentation includes the identification of any factors that may be influencing capability in relation to the decision to not accept the SAP. The assessors consider:

- Is there reason to believe that the adult may be subject to undue influence or coercion?
- What are the implications of a history of violence in relation to decision-making?
- Are there cultural beliefs or values that may be shaping how the adult understands the information related to the situation differently from the DA?
- Are there issues such as substance abuse or acute brain injury that may be contributing to inconsistent decision-making and/or follow-through?

- Are there psychosocial factors, such as high need for autonomy and control, influencing the adult's responses?

There are a number of proposed models to assist assessors in determining if undue influence is complicating the adult's decision-making. For example, the [IDEAL Model of Undue Influence](#):

- **I**solation
- **D**ependency
- **E**motional manipulation and/or Exploitation of a weakness
- **A**cquiescence
- **L**oss

## Communicating the assessment results

On completing an assessment, the assessors must (a) advise the adult of the details and results of the assessment, and (b) provide to the adult's legal counsel, the DA that asked for the assessment and, if present during the assessment, the adult's spouse, near relative or friend (i) written information respecting the details and results of the assessment, and (ii) a completed copy of the incapability assessment report in Form 1 [A&N Reg. s. 6].

### Advising the adult of the results

Assessors determine how to best present the assessment results to the adult.

If the assessors know what their determination is at the completion of the interview, they tell the adult the results at the end of the interview. Ideally, they let the adult know their opinion regarding the adult's incapability, how they came to that opinion, whom the report will be given to, and the adult's legal options.

If the adult is assessed as capable, the assessors let the adult know when their assessment report and the Incapability Assessment Report Form 1 will be available to the adult.

If the adult is assessed as incapable, the assessors let the adult know when and where they can access a copy of their assessment report and Incapability Assessment Report Form 1. They decide where best to leave the adult's copy of the assessment report and Form 1 based on how upsetting re-reading it may be to the adult and any safety and/or privacy considerations. The assessors may decide to leave the assessment report and Incapability Assessment Report Form 1 with a health/social service provider or other supporter of the adult.

If the assessors do not know their determination at the conclusion of the interview, wherever possible they will go back to see the adult to tell them the results and indicate how copies can be accessed as noted above.

Where the assessment indicates that an adult is incapable, but the assessors believe this could be temporary, they may include in their report a recommendation to reassess within a specified period of time.

Where the results are inconclusive, follow-up support for the adult is provided by the DA which may offer the SAP again. However, the adult's wishes must be respected.

Where the results of the assessment are inconclusive, the adult is presumed capable.

The adult's response to the assessment results should be documented.

### **Providing written copies of the assessment report and Form 1**

The assessors provide the assessment report and the Incapability Assessment Report Form 1 to the adult's support person who was present during the interview, the DA Key Contact/AG Lead, the PGT and the adult's legal counsel if the adult has a lawyer at this stage. If the adult does not have legal counsel, the DA Key Contact/AG Lead will provide it to their legal counsel who will provide it to the adult's counsel once identified.

The details of the assessment report and the Incapability Assessment Report Form 1 are included as part of the DA's application for a Support and Assistance Court Order.

### **Proceeding to court**

Upon receipt and review of the Incapability Assessment Report Form 1 and detailed assessment report, the PGT pays the assessors' invoices.

The DA Key Contact/AG Lead consults with the DA legal counsel as appropriate upon receipt of the Incapability Assessment Report Form 1 and the detailed assessment report to determine next steps.

Upon receipt of the assessment results, the DA may apply to the Provincial Court, Family Division for an order to provide the services set out in the SAP.

Before making an order, the court considers whether the adult:

- is abused or neglected;
- is unable to seek support and assistance because of an illness, disease, injury or other condition that affects [their] ability to make decisions about the abuse and neglect; and
- needs and would benefit from the services proposed in the SAP [AGA s. 56(1)].

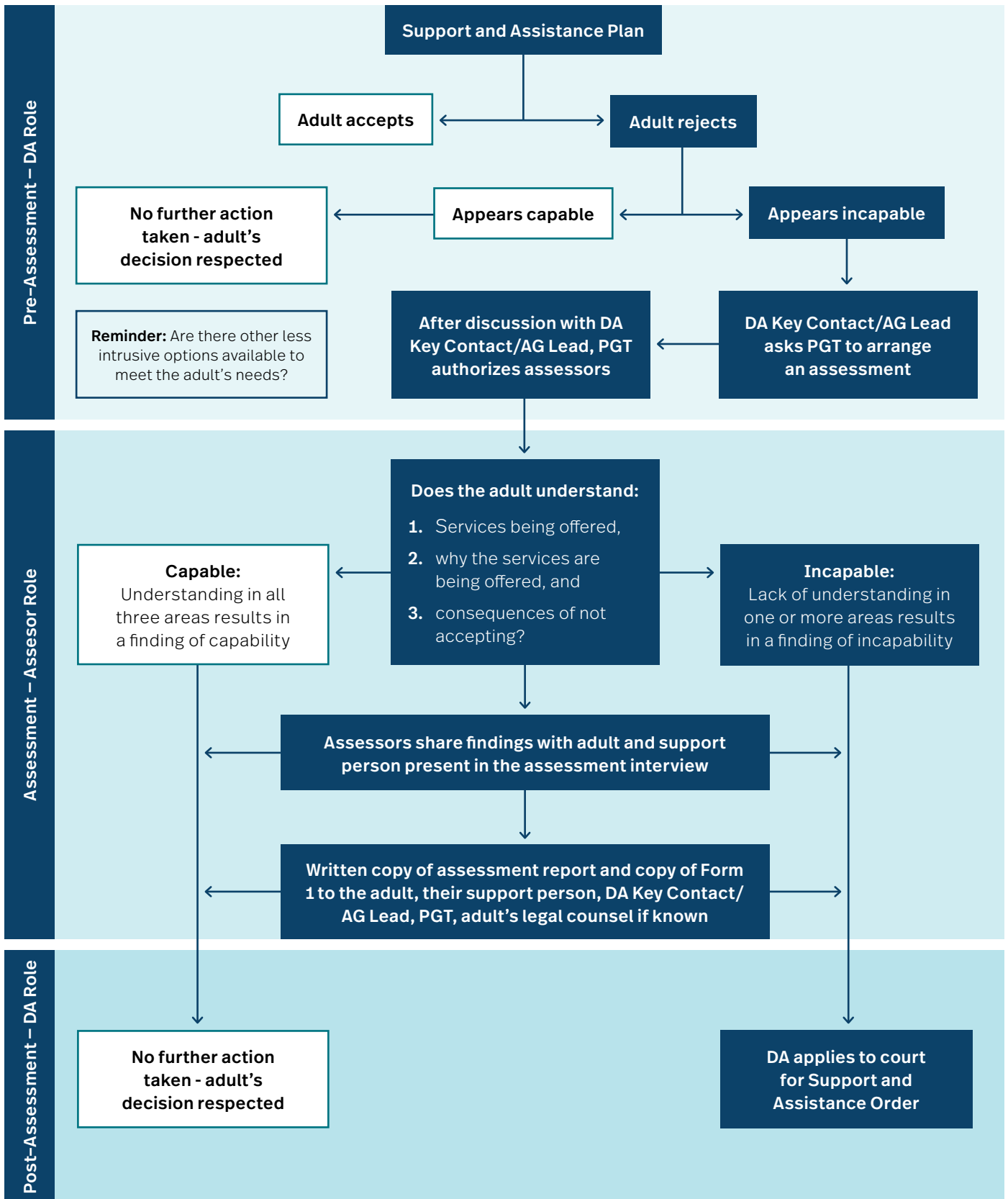
The assessors may be asked to provide affidavit evidence. The assessors ensure that they have appropriate documentation (see **“Documentation” on page 17**). On occasion, assessors may be called upon to give evidence during the hearing concerning their assessment of the adult.

Assessors are contacted by the person from within the DA, likely the DA Key Contact/AG Lead or their legal counsel who is responsible for conducting the case and assisting with preparations for the court hearing.

If the court makes an order, the DA Key Contact/AG Lead or their legal counsel provides a copy of it to the PGT.

# Appendix A

Flow chart of the incapability assessment – context and process



# Appendix B

## Communication

### **Factors and barriers affecting communication with adults**

Information is to be communicated to the adult in a manner appropriate to the adult's skills and abilities. Assessors consider the adult's mode of communication and identify any general factors that affect the adult's ability to communicate, including:

- The effect of anxiety caused by the incapability assessment
- Safety issues
- Undue influence
- Memory problems
- The effect of stress and illness
- The amount of time the adult requires to respond
- The amount of information the adult can assimilate at one time
- How the adult responds to unfamiliar or new information
- Visual limitations
- Hearing impairments
- Receptive language disorders (e.g., some forms of aphasia)
- Literacy
- Speech problems
- Expressive language deficits (e.g., some forms of aphasia)
- Limitations in motor control (e.g., cerebral palsy)
- Fear of the assessment process
- Cultural and language issues

### **Enhancing communication**

Assessors can enhance communication through support materials, environmental adaptations and communication techniques such as:

- Providing adequate privacy and time
- Ensuring safety
- Ensuring comfort
- Personal aids (e.g., pocket talkers, Bliss Boards, PIC symbols)
- Visual materials to supplement information presented verbally (e.g. illustrations, written materials, videotapes)
- Using a quiet, warm approach
- Listening
- Using clear language
- Eliminating jargon or technical terms
- Modifying questions to allow for "Yes/No" answers when more open-ended questions are causing distress or communication break-downs
- Presenting manageable amounts of information
- Using eye-blink, movement responses (e.g., nodding head) or facilitated communication
- Referring to appropriate and relevant events in the adult's life
- Providing opportunities for feedback and clarification by repeating or paraphrasing what the adult has said
- Matching verbal and nonverbal cues
- Providing full explanations, avoiding the need for inferences
- Use of a neutral interpreter



# Appendix C

## Cognitive factors affecting understanding

Comprehension and memory are fundamental to understanding. The process of understanding and the demonstration of understanding may be affected by conditions that have an impact upon:

- Attention (e.g., ability to concentrate on the information being provided)
- Reasoning (e.g., ability to make choices)
- Judgment (e.g., ability to draw conclusions)
- Learning and retention (e.g., ability to remember information long enough to understand)
- Receptive and expressive communication skills (e.g., ability to comprehend the language or mode of expression in which information is given)
- Executive (e.g., ability to organize, plan)

When a condition affecting these areas is present, assessors consider the impact the condition is having on the adult's ability to understand and to demonstrate that understanding related to the decision to not accept the SAP.

Other factors that may affect the adult's understanding include:

- Fear
- Delirium (i.e., fluctuating attention and cognitive functioning associated with altered psychomotor activity and disturbed sleep-wake cycle)
- Depression or mania
- Delusions - firm, fixed and false beliefs maintained despite evidence to the contrary, and not ordinarily accepted by members of the adult's family, culture or social group
- Hallucinations
- Phobias, panic, anxiety or obsessions
- Perception of dependence on another person
- Inability to control one's actions (e.g., the adult may say or do things contrary to their own expressed wishes as a result of certain conditions affecting judgment and reasoning)
- Cultural tensions

When these factors are present, assessors consider whether the adult's understanding is compromised. Moreover, assessors consider whether the adult's understanding is affected by idiosyncratic or eccentric beliefs. Idiosyncratic or eccentric beliefs about health care are not necessarily indicators of incapability.

# Appendix D

## Standard Incapability Assessment Report: Suggested layout and topics

### 1. Assessor information

Names of the assessors and their addresses, telephone numbers, fax numbers, e-mail addresses, and the organization they represent if applicable

### 2. Preparation

- 2.1 This page should contain information about the adult being assessed (name, address, date of birth)
- 2.2 Summary of the preparation for the assessment, including a review of the adult's health status, who was contacted for collateral information

### 3. Overview of assessment process

- 3.1 Include information (as noted above) related to when, where meetings took place, who was present, meeting length
- 3.2 How any safety issues were addressed
- 3.3 How communication needs were addressed

### 4. Telling the adult about the assessment

- 4.1 Explanations given to the adult regarding the purpose of the assessment and the person/s from whom information may be collected
- 4.2 The adult's response, including objections
- 4.3 A description of any follow-up attempts to explain the purpose and/or assessors' role

### 5. Collateral information

- 5.1 Observational information collected
- 5.2 Collateral information collected
- 5.3 Consultation - could be through email, who was contacted
- 5.4 Who was interviewed
- 5.5 Who was not interviewed and why
- 5.6 Information collected through consultation

### 6. Process of exploring understanding of the support and assistance plan

- 6.1 How much understanding did the adult have about the proposed SAP at the onset of the meetings?
- 6.2 How were the components of the SAP explained to the adult?
- 6.3 Which if any structured tools were included in the assessment process?
- 6.4 What was the adult's response to being assessed?

### 7. Determining understanding

- 7.1 Identify the legal standards being used to determine incapability. These include the adult's understanding of:
  - the services offered,
  - the reasons the services are being offered, and
  - the consequences of not accepting the services.
- 7.2 How the adult demonstrated understanding
- 7.3 What extenuating factors may be affecting understanding? Consider how/if these can be addressed

## **1. The findings of the assessment**

- 1.1** What were the findings of the assessment in relation to the adult's decision to not accept the SAP? Address each component of the legal standards (i.e. ability to understand services offered, reasons why offered, and consequences of not accepting the services - as outlined by the DA)
- 1.2** Whether there was disagreement about the findings between the assessors
- 1.3** Recommendation for review of incapability, if any

## **2. Communicating the assessment results**

- 2.1** How results were given to the adult and rationale regarding decision to leave a copy
- 2.2** The adult's response to the assessment results
- 2.3** Who was given a copy of the results of the assessment and the Incapability Assessment Form 1
- 2.4** When the Incapability Assessment Form 1 was completed and sent to the DA Key Contact/AG Lead, the PGT and the adult's legal counsel if identified

## **3. Referral back to the designated agency**

- 3.1** Was the assessment terminated for any reason and referred back to the DA Key Contact/AG Lead
- 3.2** The reasons for terminating the assessment

## **4. Signature of the assessors and date**

# Appendix E: Incapability Assessment Report

(For informational purposes only)

## Form 1 - Adult Guardianship Act

Section 53 (5) of the Act

### Incapability Assessment Report

(This form to be completed by Authorized Assessors)

I/We, the assessors(s) named below, confirm that I/We have assessed whether

\_\_\_\_\_ (name of adult) is incapable of deciding not to accept the services proposed in a support and assistance plan prepared by \_\_\_\_\_ (name of designated agency).

Our assessment is that the adult named above is (tick the appropriate box)

- Capable** of deciding not to accept the services proposed in the support and assistance plan.
- Not Capable** of deciding not to accept the services proposed in the support and assistance plan.

The assessor(s) who conducted the assessment (attach extra sheets if necessary) are:

1. \_\_\_\_\_ (name)  
\_\_\_\_\_ (address)  
\_\_\_\_\_ (city) \_\_\_\_\_ (province) \_\_\_\_\_ (postal code)  
\_\_\_\_\_ (telephone number) \_\_\_\_\_ (fax number)  
\_\_\_\_\_ (signature) \_\_\_\_\_ (date)

2. \_\_\_\_\_ (name)  
\_\_\_\_\_ (address)  
\_\_\_\_\_ (city) \_\_\_\_\_ (province) \_\_\_\_\_ (postal code)  
\_\_\_\_\_ (telephone number) \_\_\_\_\_ (fax number)  
\_\_\_\_\_ (signature) \_\_\_\_\_ (date)

(Provisions relevant to the enactment of this regulation: Adult Guardianship Act, R.S.B.C. 1996, c. 6, section 63)

# Appendix F

## Original Assessment of Incapability Steering Committee

### **Norma Collier**

Representative, B.C. Association for Community Living, Castlegar

### **Barbara Lindsay**

Representative/Lawyer, Alzheimer Society of B.C., Vancouver

### **Brigitte Wagner**

Representative, B.C. Coalition to Eliminate Abuse of Seniors, Vernon

### **Stephen Kline**

Head, Department of Psychiatry, St. Paul's Hospital, Vancouver

### **Aida Davis**

Director of Services to Adults, Public Guardian and Trustee of B.C., Vancouver

### **Pieter De Groot**

Manager, Adult Guardianship Implementation, Ministry of Health, Victoria

### **Alison Leaney**

Adult Guardianship Legislation Implementation Project, Public Guardian and Trustee of B.C., Vancouver

### **Andrew Kellett**

Chair, Surrey Central Community Mental Health Advisory Council, Surrey

### **Giuseppe Scaletta**

Coordinator, Elderly Outreach Service, Capital Health Region, Victoria

### **Patti Flaherty**

Vancouver Hospital and Health Sciences Center; GF Strong Center, Vancouver

### **Robert Gordon**

Associate Professor, School of Criminology, Simon Fraser University, Vancouver

### **Linda Derkach**

Director of Implementation, Adult Guardianship Legislation, Public Guardian and Trustee of B.C., Vancouver

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# Contact the Public Guardian and Trustee

## Assessment and Investigation Services

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<b>Local phone</b>	604-660-4507
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<b>Local fax</b>	604-660-9479
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<b>Email</b>	<a href="mailto:ais-pds@trustee.bc.ca">ais-pds@trustee.bc.ca</a>
<b>Website</b>	<a href="http://www.trustee.bc.ca">www.trustee.bc.ca</a>

### PGT hours of operation

Monday to Friday 8:30am to 4:30pm