
A GUIDE TO THE CERTIFICATE OF INCAPABILITY PROCESS UNDER THE *ADULT GUARDIANSHIP ACT*

MAY 1, 2016

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To obtain an electronic version of this Guide and the forms in Appendix E, visit the PGT Website at:

<http://www.trustee.bc.ca/reports-and-publications/Pages/certificate-of-incapability-guidelines.aspx>

INTRODUCTION

WHAT IS THIS?

This Introduction:

- Provides an overview of this Guide
- Introduces the Guide user to the structural content they will need to know when learning the certificate of incapability processes presented in the subsequent Parts. This structural content includes:
 - Points to note and Guide term use
 - Acronyms
 - Legislation referred to in this Guide
 - Roles and responsibilities
 - Certificate of incapability - forms
- Introduces capability, incapability and financial decision making
- Provides an overview of the legislative framework that exists in British Columbia to protect the interests of adults who are mentally incapable or vulnerable

This is important because...

The certificate of incapability process is surrounded by a complex legislative framework, with formally defined roles, responsibilities, terms and forms, many of which are unique to this process. Having a base level of knowledge of these topics will provide the reader with the background required to better understand the certificate of incapability processes outlined in Guide Part II – V.

RELATED LEGISLATION NOTED

- Adult Guardianship Act (AGA)
- Statutory Property Guardianship Regulation (SPG Regulation)
- Patients Property Act (PPA)
- Public Guardian and Trustee Act (PGT Act)
- Mental Health Act
- Representation Agreement Act
- Health Care (Consent) and Care Facility (Admission) Act
- Power of Attorney Act
- Indian Act (Canada)
- Divorce Act (Canada)
- Criminal Code of Canada
- Freedom of Information and Protection of Privacy Act (FOIPPA)



RELATED FORMS

All formal forms defined in legislation and process related forms and packages used in the certificate of incapability process are described in this Introduction.

OVERVIEW

GUIDE PURPOSE

The purpose of this Guide is to promote best practices and consistent procedures throughout BC for issuing certificates of incapability based on Part 2.1 of the *Adult Guardianship Act (AGA)* and the Statutory Property Guardianship Regulation (SPG Regulation), and protect the rights of adults involved in this practice. In addition, this Guide should help ensure that the people involved in the certificate of incapability process are aware of their legal obligations under Part 2.1 of the AGA.

As of December 1, 2014, this Guide replaces the Public Guardian and Trustee of British Columbia (PGT) document entitled “Guidelines for Issuing a Certificate of Incapability Under the *Patients Property Act*”, (October 2011).

GUIDE DEVELOPMENT AND CHANGES

The practices and procedures outlined in this Guide were developed in consultation with the Certificate of Incapability Process Working Group, made up of representatives from the Ministry of Health, the PGT, the Ministry of Justice and health authorities, as well as a clinical geriatric psychiatrist.

The Guide content reflects the new legislative framework for issuing certificates of incapability under Part 2.1 of the AGA. This content does not replace the acts or regulations nor is it legal advice. If in any doubt as to how to proceed, please consult the legislation or obtain legal advice. The Guide will continue to be revised based on changes in legislation and experience with implementing the new practices, procedures and forms.

As well, this Guide should be used in conjunction with health authority and organization specific policies and procedures, and is written in such a way as to allow for flexibility in local variations in practice while at the same time ensuring adherence to best practices and the more formal legislative requirements.

The new requirements for this process are complex from both a legislative and operational perspective, and will require patience and understanding from all parties involved to ensure that the person at the center of this process, the adult who may need help with managing their financial affairs, is treated in a fair and respectful manner.

GUIDE USERS

The Guide is intended to be used by qualified health care providers (QHCP), health authority designates (HAD), other health care providers working inside and outside of health authorities as well as the PGT. It may also assist others in the community who play a role when there is reason to believe that an adult is incapable of managing their financial and legal affairs and a certificate of incapability may be needed.

GUIDE STRUCTURE AND CONTENT

This Guide is not intended to stand on its own. It is expected the health care professional will have received formal training, including the successful completion of the Ministry of Health course *A Guide to the Certificate of Incapability Process under the Adult Guardianship Act*, as well as coaching support, as required, prior to conducting an assessment of incapability.

The Guide is intended to be a reference document and is structured in Parts, which allows each topic to be explored separately. This increases the usability of the document and will encourage health care professionals to review and refresh their knowledge as they complete assessments of incapability.

Following the Overview, the Guide is written in five Parts. These Parts align with certificate of incapability processes.

PART I: DETERMINE THE NEED – REFERRAL AND INVESTIGATION

- Describes how adults that may need help managing their finances are identified
- Explains the roles of designated agencies and the 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

PART II: ASSESSMENT

- Outlines principles to guide the assessment process
- Explains the required assessment components
- Outlines information required to be provided to the adult before an assessment
- Outlines and explains the test of incapability
- Covers assessment issues including collecting collateral information, having a support person present, use of an interpreter, and conducting an assessment without the adult's participation
- Provides guidance for conducting the medical and functional components of the assessment
- Explains the steps to completing the assessment, determination of the adult's incapability, filling out forms, advising the adult of the results and informing the HAD and the PGT

PART III: HEALTH AUTHORITY DESIGNATE DECISION

- Explains the role of the HAD and how they are designated
- Outlines the Four Key Steps the HAD follows
 - Reviews the HAD Information Package and determines if additional information is required
 - Applies legal criteria to make a decision about whether to issue a certificate of incapability
 - Provides notice of the intention to issue a certificate of incapability and opportunity to respond
 - Decides whether to issue a certificate of incapability

- Explains the role of the PGT as committee of estate when a certificate of incapability is issued

PART IV: SECOND ASSESSMENT, REASSESSMENT, COURT REVIEW AND ENDING PGT AUTHORITY

- Explains the process and timing for requests for second assessments
- Outlines situations in which an adult must be reassessed and the exceptions
- Describes roles of health authorities and the PGT in coordinating second assessments and reassessments
- Explains the consequence of determination on second assessment or reassessment
- Describes the process for requesting court review of a determination of incapability
- Explains the ways that PGT authority as statutory property guardian may end

PART V COLLECTION AND DISCLOSURE OF INFORMATION AND RECORD KEEPING

- Explains the legislation that governs the collection, use and disclosure of personal information in the certificate of incapability process
- Explains the authority for collecting and disclosing information during the certificate of incapability process
- Explains the requirement to protect the identity of the reporting party by not disclosing their name or information that would identify them
- Describes the expectation for health authorities to maintain appropriate records

ELECTRONIC VERSION OF GUIDE

To obtain an electronic version of this Guide and the forms in Appendix E, visit the PGT Website at:

<http://www.trustee.bc.ca/reports-and-publications/Pages/certificate-of-incapability-guidelines.aspx>


POINTS TO NOTE

REFERENCE TO SPECIFIC AGA AND SPG REGULATION

Much of the content of the Guide is drawn directly from the AGA, SPG Regulation and PPA. Direct references to each of these are noted at the end of a sentence, paragraph or series of bulleted statements in the form *[Act s. section (subsection)]* for example: *[AGA s. 32(3.1)]*.

For those readers that wish to confirm the specific wording in the legislation, a copy of the AGA Parts 1, 2.1, 3 and 4 and the SPG Regulation are included in Appendix D.

BEST PRACTICE

Best Practice statements are indicated with a .

ACRONYMS

The following acronyms have been approved for use in the Guide and Forms

| Acronym | Description |
|-----------------------|---|
| AGA | <i>Adult Guardianship Act</i> |
| ADL | Activities of Daily Living |
| BC | British Columbia |
| FOIPPA | <i>Freedom of Information and Protection of Privacy Act</i> |
| HAD | Health Authority Designate |
| IADL | Instrumental Activities of Daily Living |
| PHN | Personal Health Number |
| QHCP | Qualified Health Care Provider |
| PGT | Public Guardian and Trustee of British Columbia |
| PGT Act | <i>Public Guardian and Trustee Act</i> |
| PPA | Patients Property Act |
| SPG Regulation | <i>Statutory Property Guardianship Regulation</i> |

LEGISLATION REFERRED TO IN THIS GUIDE

There are a number of different acts and regulations that are referred to in this Guide. These include the:

- *Adult Guardianship Act*
- *Statutory Property Guardianship Regulation*
- *Patients Property Act*
- *Public Guardian and Trustee Act*
- *Mental Health Act*
- *Representation Agreement Act*
- *Health Care (Consent) and Care Facility (Admission) Act*
- *Power of Attorney Act*
- *Indian Act (Canada)*
- *Divorce Act (Canada)*
- *Criminal Code of Canada*
- *Freedom of Information and Protection of Privacy Act*
- *Personal Information Protection Act*

WHO IS INVOLVED?

The formal names used in the legislation to describe the people and roles involved in the certificate of incapability process include medical practitioner, qualified healthcare provider (QHCP) and healthy authority designate (HAD).

Within health authorities, the people who have been chosen to act as QHCPs or designated as HADs may be in roles like:

- QHCP: Case managers in all settings, social workers in acute, community or residential, home health, mental health settings, occupational therapists in acute, community or residential settings, nurses, psychiatric nurses, psychologists in tertiary facilities or mental health settings
- HAD: Community managers, community administrators, health service administrators, physicians, residential managers, practice leaders, team leaders, clinical program directors, clinical program managers, psychiatry department heads

ROLES FORMALLY DEFINED IN THE AGA AND/OR THE SPG REGULATION

There are a number of organizations and individuals in various roles that are directly or indirectly involved in the certificate of incapability process including investigation, assessment and determination of financial incapability and in the decision and issuing of a certificate of incapability.

The following specific roles relate to the people and organizations involved in the certificate of incapability process, most of which are defined in the AGA, SPG Regulation or PPA.

| Role | Description |
|----------------------|--|
| Adult | This person is the subject of the certificate of incapability process. The person who has reached 19 years of age <i>[AGA s. 1]</i> |
| Spouse | The spouse may be involved in the investigation and assessment as a support person and, in addition to the adult may receive notice of matters relating to the certificate of incapability process. A spouse is a person who is: <ul style="list-style-type: none"> ▪ Married to another person, and is not living separate and apart, within the meaning of the <i>Divorce Act</i> (Canada), from the other person ▪ Living with another person in a marriage-like relationship <i>[AGA s. 1]</i> The amount of time the couples must be living together in a marriage like relationship to be considered a spouse is not specified. |
| Near Relative | Near relatives may be involved in the investigation and assessment as a support person and may receive notice of matters relating to the certificate of incapability process. Near relatives are adult children, parents, adult brothers or sisters, |

| Role | Description |
|--|---|
| | grandparents or any other adult related by birth or adoption. <i>[AGA s. 1]</i> |
| Medical Practitioner | Medical practitioners are referred to throughout this guide as physicians and/or QHCPs. Medical practitioners are the only health care providers who are able to complete the full assessment (both medical and functional components) independently. |
| Qualified Health Care Provider | <p>A QHCP is responsible for conducting the functional component of an assessment of incapability and for making a determination about an adult’s financial incapability. QHCPs are physicians and registered members of the following colleges who have met the standards, limits and conditions established by their college to act as QHCPs:</p> <ul style="list-style-type: none"> ▪ Registered Nurses (of British Columbia) ▪ Registered Psychiatric Nurses (of British Columbia) ▪ Registered Occupational Therapists (of British Columbia) ▪ Registered Psychologists (of British Columbia) ▪ Registered Social Workers (of British Columbia) <p><i>[SPG Regulation s. 3]</i></p> |
| Lead Qualified Health Care Provider | <p>The Lead QHCP is identified at the beginning of the certificate of incapability process. The Lead QHCP is responsible for:</p> <ul style="list-style-type: none"> ▪ Reviewing all assessment information ▪ Making the determination about the adult’s financial incapability ▪ Signing the <u>Form 1 – AGA Report of Assessment of Incapability</u> and attaching the <u>Details of Assessment</u> |
| Health Authority Designates | <p>HADs are people designated as having authority to issue certificates of incapability under section 32 of the AGA.</p> <p>A HAD may be designated in one of two ways:</p> <ul style="list-style-type: none"> ▪ Directly by the regional health board or the Provincial Health Services Authority (PHSA); or ▪ If the regional health board has passed a bylaw approved by the Minister of Health authorizing an employee, such as the Chief Executive Officer, to designate HADs on behalf of the board, then by that employee. <p><i>[AGA s.1], [SPG Regulation s 4.]</i></p> |
| Ministry of Health | <p>The Ministry of Health has overall responsibility for ensuring that quality, appropriate, cost-effective and timely health services are available for all British Columbians. The Ministry is responsible for province wide health system policy, legislation and professional regulation, funding and accountability. The Ministry developed this Guide and the corresponding training in collaboration with the Public Guardian and Trustee and the health</p> |

| Role | Description |
|---|--|
| | <p>authorities.</p> <p>The Minister of Health is responsible for approving health authority bylaws that appoint an employee to designate health authority designates.</p> |
| <p>Public Guardian and Trustee of British Columbia</p> | <p>The PGT has a statutory role to protect the interests of British Columbians who lack legal capacity to protect their own interests.</p> <p>The PGT has a role in investigating concerns about vulnerable adults whose finances may be at risk, and becomes statutory property guardian and committee of estate for an adult when a certificate of incapability is issued.</p> <p>In the certificate of incapability process, the PGT is the only one that can become an adult’s statutory property guardian. Once appointed, the PGT carries out its duties as committee of estate.</p> |

CERTIFICATE OF INCAPABILITY – FORMS

There are several forms used in the certificate of incapability process. The use of some of these forms is defined in legislation, while other forms are administrative and support the related processes.

For each form, the official name, shortened name, description of intended use and a sample is included in Appendix E.

In the Guide, the form shortened names were used in order to improve readability.

The forms referenced for use in each of the Parts of the Guide include:

Part I: Determine the Need

- No forms referenced

Part II: Assessment

- Adult Information Sheet
- Medical Component of Assessment Form
- Functional Component of Assessment Form
- Form 1 - AGA Report of Assessment of Incapability and Details of Assessment
- HAD Information Package Cover Sheet
- HAD Checklist for Issuing a Certificate

Part III: Health Authority Designate Decision

- Form 1 - AGA Report of Assessment of Incapability and Details of Assessment
- HAD Information Package Cover Sheet
- HAD Information Package

- HAD Checklist for Issuing a Certificate
- HAD Notice of Intention to Issue a Certificate
- Form 2 - Adult Guardianship Act Certificate of Incapability
- HAD's Concluding Letter

Part IV: Second Assessment, Reassessment, Court Review and Ending PGT Authority

- Form 1 – AGA Report of Assessment of Incapability and Details of Assessment
- HAD Acceptance of Determination of Capability
- Cancellation of Certificate of Incapability

Part V: Collection and Disclosure of Information and Record Keeping

- Form 1 – AGA Report of Assessment of Incapability and Details of Assessment
- Medical Component of Assessment Form
- Functional Component of Assessment Form



ADULT GUARDIANSHIP ACT GUIDING PRINCIPLES

The Adult Guardianship Act sets out Guiding Principles and a presumption of capability which govern all activities under the Act.

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.*

ADULT GUARDIANSHIP ACT 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 he or she is incapable of making decisions about these matters.*



CAPABILITY AND DECISION MAKING

Every day adults may make decisions about things like finances, personal matters, health care, housing, and family. Adults are presumed to be capable of making decisions until the contrary is demonstrated. Mental capability refers to an adult's ability to make decisions and is decision-specific. Capability is no longer thought to be 'all or nothing'. An adult may be capable of making decisions in some areas of their life, while incapable of making decisions in other areas. The law differentiates between health care, personal, financial and legal decisions.

When a legal determination of incapability is made another person is given the responsibility for making decisions for the incapable adult. When a certificate of incapability is issued for an adult who has been determined to be incapable of managing their financial affairs, the PGT is appointed to manage the adult's finances.

| Type of Decision | Examples |
|------------------|------------------------------|
| Health care | Giving consent to treatment |
| Personal | Admission to a care facility |
| Financial | Selling a house |

In BC, adults can plan for a time when they might need help making decisions by appointing another person to make decisions through an enduring power of attorney or a representation agreement. However, as this is not always the case, some adults may be left vulnerable to abuse, neglect or self-neglect.

There are a number of laws in BC that aim to assist and protect adults who may be vulnerable or incapable and in need of support.

FINANCIAL DECISION MAKING

This Guide outlines the process for issuing a certificate of incapability under Part 2.1 of the *AGA*, which came into effect on December 1, 2014, and pertains only to the area of financial decision making. Through this process, the PGT may be appointed as statutory property guardian/committee of estate of an incapable adult to manage their financial affairs. It is not related to a certificate or certification under the *Mental Health Act* and the *Mental Health Act* appeal mechanisms do not apply.

A certificate of incapability is issued only after investigations by health authorities and the PGT reveal that the certificate of incapability process is the best option for assisting an adult who has been assessed as being mentally incapable regarding their financial decision making. It is important to note that in the majority of investigated reports, options are found to support the adult's independence and autonomy by offering the necessary support to help them successfully manage their financial affairs.

CERTIFICATES OF INCAPABILITY SHOULD ONLY BE ISSUED AS A LAST RESORT

The right to manage one's own financial and legal affairs is a significant right and should only be given up when other less intrusive options have been considered or tried. See Appendix B - Options to Consider.

At any stage in the certificate of incapability process, the PGT or HA may receive new information, and in collaboration cease the process and implement a less intrusive intervention.

IF THE ADULT HAS A COMMITTEE OF ESTATE

If the adult already has a committee of estate appointed by the court under the PPA, a certificate of incapability is not an option and should not be pursued. [AGA s.32(7)]

LEGISLATIVE FRAMEWORK

In BC, the AGA, PPA, PGT Act, *Power of Attorney Act*, *Representation Agreement Act*, and *Health Care (Consent) and Care Facility (Admission) Act* provide the framework for protecting the interests of adults who are mentally incapable or otherwise vulnerable.

Under the authority of Part 3 of the AGA and the PGT Act, the health authorities and Community Living BC (CLBC) and the PGT may investigate concerns involving vulnerable adults who may be at risk. If the need, regarding management of financial affairs is identified, a certificate of incapability may be issued by a HAD.

There are two pieces of legislation in British Columbia that govern the guardianship (or "committeeship") of incapable adults. Selected provisions of Part 2.1 of the AGA relating to the certificate of incapability process by which the PGT becomes statutory property guardian for an adult became effective on December 1, 2014. The PPA continues as the legislation governing the process for the court-appointment of a guardian (or "committee") for an incapable adult.

PATIENTS PROPERTY ACT

After hearing an application, the Supreme Court can issue an order deeming an adult to be incapable of managing their affairs and appointing a committee. The court can appoint either or both a committee of estate (for legal and financial affairs) and a committee of person (for health and personal care matters). A committee of person can only be appointed by court order.

Under the PPA, the incapable person is called a "patient", and the person with authority to act for the patient (i.e., the person appointed by the court or the PGT), is a "committee". The definition of "committee" includes a statutory property guardian under Part 2.1 of the AGA. When the PGT is a statutory property guardian, the PGT is considered committee of estate and the relevant provisions of the PPA apply.

Regardless of who is appointed or how they are appointed, the authority of a committee of estate/statutory property guardian is limited to financial management and legal representation. The table below shows what a statutory property guardian can and cannot do.

| Committee of Estate/Statutory Property Guardian does: | Committee of Estate/Statutory Property Guardian does not make decisions about: |
|--|--|
| <ul style="list-style-type: none"> ▪ Secure assets ▪ Confirm eligibility for benefits ▪ Receive income ▪ Pay bills ▪ Contract for services ▪ Maintain, purchase, and sell real estate ▪ Manage investments ▪ Prepare tax returns ▪ Appropriately provide for legal dependents | <ul style="list-style-type: none"> ▪ Health care * ▪ Personal decisions * ▪ Placement and living arrangements * ▪ Marriage or divorce ** ▪ Adoption ** ▪ Voting ** ▪ Executing a will ** ▪ Criminal proceedings ** ▪ Immigration matters ** |

** These decisions require either the appointment of a committee of person under the PPA or a representative under the Representation Agreement Act.*

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

ADULT GUARDIANSHIP ACT, PART 2.1

Part 2.1 of the AGA deals with the process by which the PGT becomes statutory property guardian for an adult when a certificate of incapability is issued for the adult. A certificate of incapability may be issued by a HAD, giving the PGT authority to make the adult’s financial and legal decisions.

NOTE ON TERMINOLOGY – COMMITTEE OF ESTATE AND STATUTORY PROPERTY GUARDIAN

The PPA uses the term “committee” to refer to the person with authority to manage the financial and legal affairs of the incapable adult. The AGA uses the term “statutory property guardian” to refer to the PGT. Since the focus of this Guide is on the certificate of incapability process under Part 2.1 of the AGA, the term ‘statutory property guardian’ is the term most commonly used throughout. It is important to keep in mind that once the PGT becomes statutory property guardian under the AGA Part 2.1, the PGT manages the adult’s financial affairs as committee of estate under the PPA.

INDIAN ACT, SECTION 51

When a certificate of incapability is issued, the PGT has authority to manage the adult’s financial affairs unless the adult is a First Nations person living on reserve. When a First Nations adult who is ordinarily a resident on reserve is found to be incapable of managing their financial affairs and a certificate of incapability is issued by a health authority, Indigenous and Northern Affairs Canada becomes responsible for ensuring that the adult’s property is managed for their benefit. *[Indian Act s. 51]*

Indigenous and Northern Affairs Canada only becomes involved after a certificate of incapability is issued and plays no role in assessing the adult or determining whether the adult is incapable. For a First Nations person living on reserve, the process that leads to the certificate being issued is the same as described in this Guide, but the process following issuing the certificate of incapability is different.

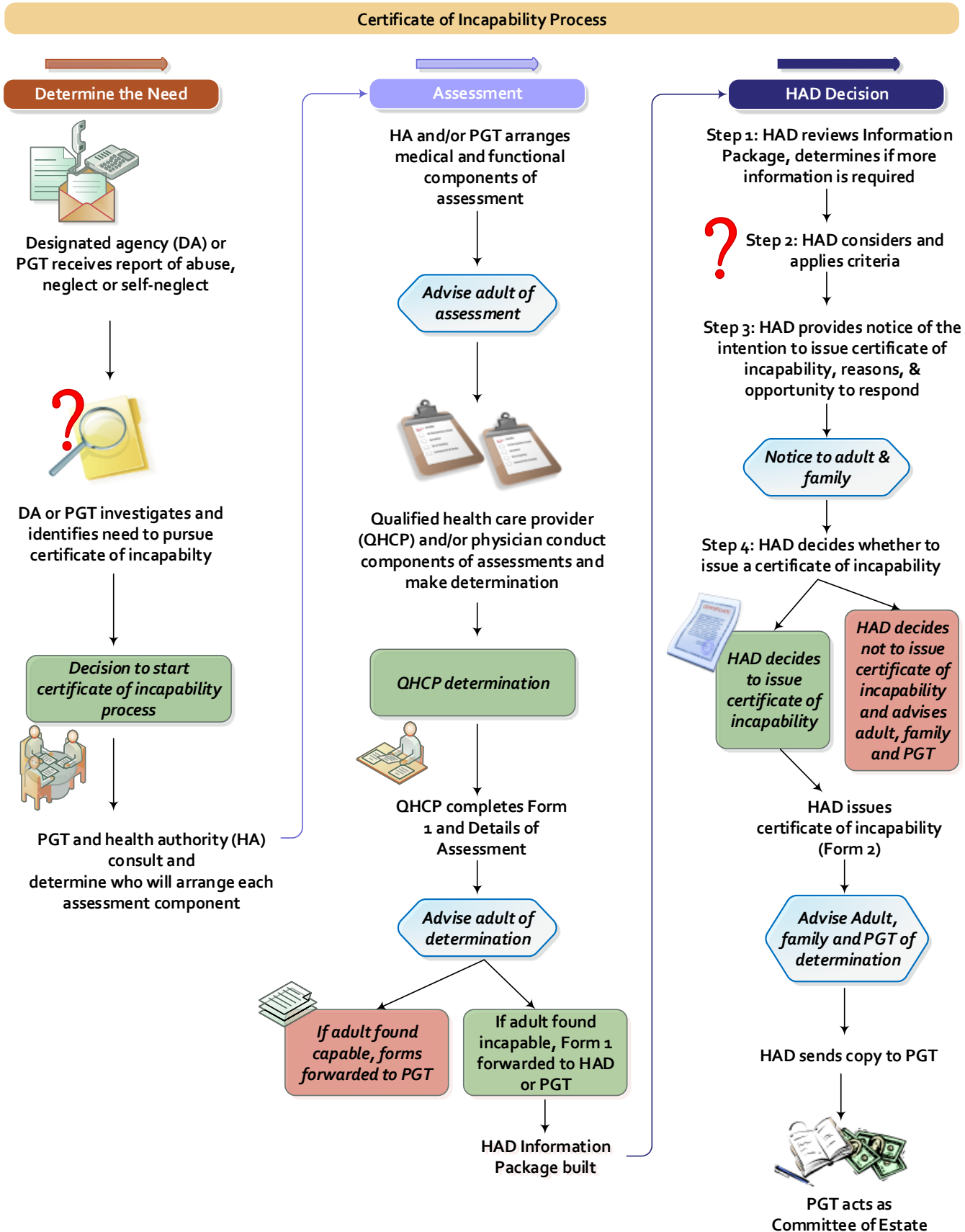
For more information, contact the Assessment and Investigations team at the PGT or an Estates Officer in Indigenous and Northern Affairs Canada.

THE CERTIFICATE OF INCAPABILITY PROCESS – FOUR CORE STEPS

The certificate of incapability process involves four core steps:



The first three steps are summarized in the following graphic.



PART I: DETERMINE THE NEED

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.

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.

PART II: ASSESSMENT

WHAT IS THIS?

Part II: Assessment:

- Outlines principles to guide the assessment process
- Explains the required assessment components
- Outlines information required to be provided to the adult before an assessment
- Outlines and explains the test of incapability
- Covers assessment issues including collecting collateral information, having a support person present, use of an interpreter, and conducting an assessment without the adult's participation
- Provides guidance for conducting the medical and functional components of the assessment
- Explains the steps to completing the assessment, determination of the adult's incapability, filling out forms, advising the adult of the results and informing the HAD and the PGT

This is important because...

Physicians and other QHCPs play a critical role in the certificate of incapability process. They are responsible for conducting the medical and functional components of a financial incapability assessment and determining whether or not the adult is incapable of managing their financial affairs. The assessment procedures are to a large degree established by regulation. It is recognized the assessment and determination can result in significant stress for the adult, their spouse and near relatives. Health care professionals involved in the assessment need to understand and follow the legal requirements and at the same time, use their professional skills and judgment to recognize, accommodate and support the adult through the process.

QHCPs do not conduct the incapability assessment in isolation, and can request collateral information, as well as additional information from the regional contact within the health authority or the PGT as needed. If during the assessment they are presented with contradictory or new information, a decision to stop the certificate of incapability process can be made in consultation between the health authority and PGT.

RELATED LEGISLATION NOTED

- *Adult Guardianship Act*
- *Statutory Property Guardianship Regulation*



RELATED FORMS AND PACKAGES

- Adult Information Sheet
- Medical Component of Assessment Form
- Functional Component of Assessment Form
- Form 1 – AGA Report of Assessment of Incapability and Details of Assessment
- HAD Information Package Cover Sheet



- HAD Checklist for Issuing a Certificate
-

PRINCIPLES TO GUIDE THE ASSESSMENT PROCESS

1. *Incapacity assessments should only be conducted as a last resort and are unnecessary if there are alternate ways of adequately meeting the adult's needs.*
2. *Incapacity assessments are undertaken only if the assessment will serve the interests of the adult.*
3. *An adult has the right to be informed of the intention to conduct an incapacity assessment and to be informed of the outcome of the assessment.*
4. *Incapacity assessments begin with the presumption that the adult is capable of making decisions.*
5. *Incapacity assessments are conducted fairly and with respect for the adult.*
6. *A capable adult has a right to make decisions about their financial affairs and must not be assessed as incapable solely because others disagree with the adult's decisions.*
7. *An incapacity assessment is a process to be completed in consultation with the adult, those who are supportive of the adult and an inter-professional team as appropriate.*
8. *Incapacity assessments in the certificate of incapability context are concerned solely with the adult's ability to make decisions about their financial and legal affairs.*
9. *Incapacity assessors respect the adult's rights to privacy, dignity and well-being.*
10. *A determination of incapability does not automatically mean a certificate of incapability is issued. A certificate of incapability is only issued as a last resort when the adult needs the PGT as committee of estate to protect and manage their financial and legal affairs.*



ASSESSMENT COMPONENTS

The assessment process described here is the same process that is used for conducting second assessments and reassessments.

Assessments under Part 2.1 of the AGA are required to have two components – a medical component and a functional component.

The medical component:

- Must be conducted by a physician within six months before the assessment report (i.e. Form 1 – AGA Report of Assessment of Incapability) is completed
- Consist of one or more examinations and all resulting diagnoses and prognoses relevant to the adult’s incapability to manage that adult’s financial affairs *[SPG Regulation s. 5]*

The functional component:

- Must be conducted by a QHCP
- Consist of one or more evaluations of the adult’s understanding of, and ability to manage, their financial affairs *[SPG Regulation s. 5]*

Physicians can conduct both components of the assessment. All other QHCPs can only complete the functional component. However, usually a physician will conduct the medical component and a QHCP other than a physician will conduct the functional component. Decisions about who will conduct which components of the assessment are made on a case-by-case basis. In some cases, the functional component may be conducted by an interdisciplinary team.

If the functional component of the assessment involves more than one QHCP, a lead QHCP must be identified who is responsible for making a determination about the adult’s incapability and signing the Form 1 – AGA Report of Assessment of Incapability with the Details of Assessment attached. If the assessment, or parts of it, are done by an interdisciplinary team, any member of the team who conducts an evaluation that is relied on to determine whether the adult is incapable of managing finances must be a QHCP. This does not preclude any of the QHCPs from obtaining and analyzing collateral information from other sources and other professionals who are not QHCPs.

COORDINATION OF THE ASSESSMENT COMPONENTS

Once it is apparent to either the PGT or the health authority that a certificate of incapability may be required, the PGT and the health authority will plan how to coordinate the assessment process, i.e., how to obtain the assessment components, who will be the lead QHCP, and who the health authority contact will be to facilitate the review by the HAD.

As mentioned previously, QHCPs do not conduct the incapability assessment in isolation, and can request additional information from the regional contact within the health authority or the PGT as needed. If during the assessment they are presented with contradictory or new information, a decision to stop the certificate of incapability process can be made in consultation between the health authority and PGT.

★ It is best practice that both the medical and functional components and the Form 1 – AGA Report of Assessment of Incapability with the Details of Assessment attached, be completed in as close time proximity to each other as possible.

WHEN INITIATED BY THE PGT

When the assessment process is initiated by the PGT, the PGT will usually coordinate the medical component and the health authority will coordinate the functional component of the assessment, unless the physician will be doing both components.

The PGT will forward the Medical Component of Assessment Form, assessment information and the Adult Information Sheet to the adult's physician. The PGT will then forward the completed medical component to the health authority, who will coordinate the functional component. Alternatively, the PGT can request that the medical and functional components occur simultaneously.

The physician bills the PGT for the cost of the assessment. The PGT covers the cost and recovers it from the adult's estate if appointed as committee of estate.

WHEN INITIATED BY THE HEALTH AUTHORITY

The health authority generally consults with the PGT before initiating an incapability assessment for the purpose of issuing a certificate of incapability.

Sometimes, the health authority will conduct a functional assessment as part of an assessment of what supports and services the adult may need. In other cases, the health authority may conduct both components of the assessment e.g., if the adult is in hospital.

If the health authority is conducting an assessment generally and a certificate of incapability is a possibility, then the health authority will follow the required processes under the Regulation including arranging for a QHCP to conduct the assessment, in case it becomes evident that a certificate of incapability is the best way to proceed.

INFORMATION TO BE GIVEN BEFORE ASSESSMENT

Before conducting the medical or functional component of an assessment, it is mandatory that the QHCP responsible for that component advise the adult of all of the following:

- The adult is being assessed to determine whether they are incapable of managing their financial affairs
- The assessment may be used to determine whether they will have, or continue to have, a statutory property guardian
- The adult can refuse to be assessed, in which case the assessment may be conducted using observational information and information gathered from other sources
- The adult may have a person of their choosing present during all or part of the assessment unless, in the opinion of the QHCP, that person's presence would disrupt or in any way adversely affect the assessment process
- If the assessment is completed, the adult may have a copy of the assessment report from the person who completes the report
- The adult may ask questions of, and raise concerns with, the QHCP with respect to the assessment and the results of the assessment *[SPG Regulation s.6 (1)]*



Best practice is for the QHCP to provide the information to the adult in writing in advance of the assessment so the adult has time to choose whether to participate and to arrange for a support person to be present. However, providing this information in advance may not be feasible in some cases. For example, it may only be possible to access the adult at the time the assessment occurs.

The advice information may be provided orally at the time the adult is contacted to book the assessment and in person with the adult at the time of the assessment. QHCPs can ensure they provide all of the required information by using the [Adult Information Sheet](#).

The QHCP who is arranging the assessment appointment can provide information to the support person about the reason for scheduling the appointment if it seems appropriate to do so. While informing a supportive caregiver can enable the adult to prepare for the assessment, the adult must be given the information directly to satisfy the legal requirement.

If the two components of the assessment are conducted by two different individuals, at different times, each must provide the required information to the adult. If the physician is conducting both of the components of the assessment at the same time, the information can be provided once.

EXCEPTION TO THE REQUIREMENT TO ADVISE ADULT

If the QHCP conducting either assessment component has reason to believe that providing the advice will result in serious physical or mental harm or significant damage or loss to the adult's property, the QHCP can decide not to provide the required information. Examples of serious physical or mental harm include self-harm or threats of suicide, or physical danger due to abuse. Significant damage or loss to the adult's assets is situation specific – even small amounts of money to adults who are living on limited incomes is significant.

If a QHCP decides to waive the requirement to provide the required information, they should document the applicable exception(s).

THE PURPOSE OF THE ASSESSMENT: THE TEST OF INCAPABILITY

The purpose of the assessment is to determine whether an adult is incapable of managing their financial affairs.

An adult is incapable of managing their financial affairs if, in the opinion of a QHCP, any of the following apply: *[SPG Regulation s. 9(1)]*

- a) The adult cannot understand the nature of the adult's financial affairs, including the approximate value of their business and property, and the obligations owed to their dependents, if any
- b) The adult cannot understand the decisions that must be made or actions that must be taken for the reasonable management of their 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 their financial affairs
- d) The adult cannot understand that the information referred to in this subsection applies to them
- 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)

An adult is incapable if any of the items in SPG Regulation 9(1) apply. For example, the adult is incapable if they cannot understand the risks and benefits of making or failing to make particular decisions in respect of their financial affairs. Items a) to d) are of a cognitive nature and item e) is about the functional ability to carry out financial decisions. The adult is also incapable if they understand a) to d) but they cannot carry out or direct others to make financial decisions on their behalf, which can be due to compromised executive functioning.

ASSESSMENT PROCESS

The assessment process involves:


- The collection of collateral information about the adult’s ability to manage their finances
- Medical examination(s)
- Interview(s) with the adult during which the QHCP asks them questions specific to functioning with regard to financial decision making
- An analysis and determination by the QHCP of whether the adult is incapable of making decisions about their financial affairs

COLLATERAL INFORMATION

Collateral information is any information that the physician or other QHCP can gain access to in addition to the medical exam or assessment interview. Collateral information is needed to verify information provided by the adult. QHCPs only collect information about the adult and their situation that is relevant and necessary for the assessment. It can include reports, test results, information from discussions with people in the adult’s life. Collateral information can be obtained from anyone who knows the adult including spouse, family, friends, neighbours, care and service providers, and financial institutions. The QHCP will need to decide on the type and who to ask for the information needed.

The questions asked are dependent on the nature of the problems identified. Generally these include:

- How the adult has been functioning with respect to their finances (with specific examples to support the observation provided)
- Information about the adult’s values
- Concerns regarding risks
- Opportunities to enhance capability that the collateral provider may know about

 Best practice is to ensure that information has been collected from collateral sources about the presenting problem and specific identified concerns prior to the assessment so that the assessment is focussed on the relevant issues. The details of the assessment may not be able to be corroborated until the adult is assessed and provides their account of the identified problem and what they believe has been done to address it. At that point, the QHCP may need to verify the accuracy of the details that the adult provided during the assessment by collecting more collateral information or corroborating it with third parties.

A NOTE ABOUT USING COGNITIVE AND FUNCTIONAL INSTRUMENTS

Standardized tests can be very useful but they are limited in what they can reveal about an adult’s actual functioning and so should only be part of the information considered in making a determination about an adult’s incapability. 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” (2009), Dr. Deborah O’Connor at <http://www.trustee.bc.ca/reports-and-publications/Pages/default.aspx>.

SUPPORT PERSONS

A QHCP may permit a person other than the adult being assessed to be present during all or part of an assessment:

- If requested by the adult
- If, in the opinion of the QHCP, it would be necessary or advisable for the purpose of communicating with the adult, or conducting the assessment. *[SPG Regulation s. 7(1)]*

A QHCP may prohibit a person being present during all or part of an assessment if, in their opinion, the presence of the person would disrupt or adversely affect the assessment process. *[SPG Regulation s. 7(2)]* This applies even if the adult requests the person to be present. *[SPG Regulation s. 7(3)]*

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

If the adult indicates they do not want a support person to accompany them, these wishes must be honoured, regardless of the support person’s reaction to the request. The QHCP 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.

USE OF INTERPRETATION SERVICES



Where an adult’s first language is not English, the QHCP 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. Sometimes the only option is to rely on a family member or other person known to the adult that may know the adult’s form of communication in which case it is important to be assured that the person is only interpreting rather than adding their own views.

CONDUCTING THE ASSESSMENT WITHOUT FULL PARTICIPATION OF THE ADULT

In exceptional circumstances, an assessment, a component of the assessment or part of an assessment may be conducted without full participation of the adult or without the adult being present, and be based on observational information and information gathered from other sources if:

- The adult refuses in full or in part, to participate in the assessment, cannot reasonably be accessed or is not reasonably able to participate in the assessment, and

- The QHCP conducting the assessment is satisfied that the assessment would be completed accurately using the information available. *[SPG Regulation s. 8(1)]*.

★ The physician and QHCP should make every effort to support and enable the adult’s participation. Reasonable attempts should be made to gain the adult’s involvement.

If an adult refuses to be assessed, cannot be accessed, or is not able to participate, the physician or QHCP must fully document the circumstances and the decision to base the assessment or part of the assessment on observational and collateral information.

FORMS

The following forms have been developed to be used for assessments of financial incapability:

- Medical Component of Assessment Form
- Functional Component of Assessment Form
- Form 1 – AGA Report of Assessment of Incapability and Details of Assessment

The Medical Component and Functional Component forms were developed to guide physicians and other QHCPs through the assessment processes and to document the results. Form 1 is a mandatory form included in the SPG Regulation that must be used to report the determination of an assessment of incapability, to which the Details of Assessment form must be attached.

CONDUCTING THE MEDICAL COMPONENT

The Medical Component of the assessment:

- Must be conducted by a physician within six months before the assessment report (Form 1 – AGA Report of Assessment of Incapability and Details of Assessment) is completed
- Consists of one or more examinations and
- Must include all resulting diagnoses and prognoses relevant to the adult’s incapability to manage finances *[SPG Regulation s. 5(a)]*

It is recommended the physician use the Medical Component of Assessment Form to record the results of the medical examination. The form is fillable, but narrative content can also be attached.

SIX MONTH REQUIREMENT

The SPG Regulation requires the examination(s) be conducted within six months of the Form 1 – AGA Report of Assessment of Incapability and Details of Assessment being completed. This is the prescribed form that the lead QHCP completes which summarizes their determination about the adult’s incapability after both assessment components are complete.

If for example, a physician conducts the medical examination on February 1, 2016, and then completes the Medical Component of Assessment Form on February 20, 2016 and the QHCP completes and signs Form 1 – AGA Report of Assessment of Incapability and attaches the Details of Assessment on July 1, 2016, this is within 6 months of the examination. However, if the QHCP completed and signed the Form 1 at any time later than August 1, 2016, then a new medical examination is required as more than six months have passed.

The six months begins on the date the physician first meets with the adult to conduct the examination for the medical component of the assessment.

- ★ It is also best practice that both the medical and functional components be completed in as close time proximity to each other and to the completion of Form 1 – AGA Report of Assessment of Incapability and the Details of Assessment as possible. This is to ensure that the adult’s medical situation is still stable when the functional component is done and that a certificate of incapability is being considered based on the most current information possible.

THE MEDICAL EXAMINATION

The medical examination is primarily to identify any diagnoses and prognoses relevant to the adult’s incapability to manage finances and to complete the Medical Component of Assessment Form. This examination may take less time when there is an existing relationship between physician and patient.

BEFORE THE MEDICAL EXAMINATION

- ★ The physician:
 - Becomes familiar with the reasons for referral leading to the need for an assessment
 - Reviews collateral information regarding medical problems - reports/test results from others and the physician’s own records if the adult is a current patient
 - Schedules the appointment and ensures the adult is provided with the information that must be given ahead of time - by phone when the appointment is being arranged, by mail, and/or at the beginning of the medical examination, taking note of the adult’s reaction. While informing a supportive caregiver can enable the adult to prepare for the assessment, the adult must be given the information directly to satisfy the legal requirement

DURING THE MEDICAL EXAM

- The physician:
 - Confirms that the information has been provided to the adult before the medical exam
 - Includes any support person as appropriate and clarifies their role
 - Reviews communication issues/barriers (sight, hearing, language, literacy, responsiveness, use of vocabulary) and documents any enhancements used during the examination (e.g., hearing enhancement tools, a translator, communication assistance by a support person the adult chooses)
 - Asks the adult about what their understanding is regarding the reason for the referral
 - Explores the adult’s understanding of their personal history (relevant to assessment) as compared to collateral information
 - Asks about educational level
 - Asks about history of marriage/relationships
 - Asks about the adult’s children: Are they dependents? What assistance, if any, do the children provide to the adult regarding financial management?
 - Asks about the adult’s past values with respect to the use of finances? Are there any recent deviations from their usual pattern?

- Explores the adult’s understanding of their family’s history of illnesses, relevant to the examination and problems identified
- Explores the adult’s understanding of their past medical, psychiatric and surgical history (relevant to the assessment) as compared with collateral information
- Explores the adult’s understanding of medications he or she is currently taking as compared with collateral information
- Conducts a functional enquiry relevant to financial management including changes in sight/hearing, functioning, supports, use of substances, Activities of Daily Living (ADL), Instrumental Activities of Daily Living (IADL), and risk taking
- Ask other questions relevant to the assessment and any problems identified
- Conducts a complete mental status examination which includes attitude, affect, thought content, perceptions, cognition, and executive functioning

AFTER THE MEDICAL EXAMINATION

The physician completes the Medical Component of Assessment Form using all this information to document the results of the examination i.e., diagnoses and prognoses relevant to the ability to manage financial affairs. The physician:

- Considers whether there is a need to obtain any additional collateral to make any diagnoses
- Documents the adult’s diagnoses and related prognoses
- Documents whether the diagnoses and prognoses may contribute to the adult’s incapability to manage their financial affairs and whether that ability is likely to improve.
- Informs the adult of what will happen next – other assessment components, where they will send the medical component, next steps depending on the determination of incapability or capability
- Sends the completed form back to the PGT or whoever requested that the medical exam be completed

After the medical examination, the physician should provide information to the adult about the outcome of the medical component of the assessment in the way they consider appropriate. If the functional component is going to be conducted by a QHCP other than the physician, then the physician should inform the adult that any further information regarding the assessment results will be provided by that QHCP. The physician is not required to provide the adult with a copy of the Medical Component of Assessment Form, but can do so if they wish, as long as the adult is informed it does not constitute the complete assessment. If the physician who completed the medical component is also completing the functional component of the assessment the physician should follow the process outlined below.

CONDUCTING THE FUNCTIONAL COMPONENT

Note: QHCP is the term used throughout the rest of this section as the person who will conduct the functional component of the assessment. It is important to remember that a QHCP can also be a medical practitioner/physician.

PREPARING FOR THE INTERVIEW



In preparing for the assessment, the QHCP plans and/or decides based on input from service providers and any support people in the adult's life:

- How and when is best to contact the adult to schedule the functional component
- How best to provide the adult with the information required about the assessment in advance
- What is needed for the adult to feel prepared for the interview
- The best time of day and location for the functional component to take place – at adult's home if possible
- How to understand the adult's form of communication
- How to handle a situation where there is someone responsible for abusing the adult who wants to be present
- How best to pose the questions during the interview – e.g., repetition, breaking questions into parts

THE FUNCTIONAL COMPONENT INTERVIEW(S)



The functional component assessment interview should follow an adult-centered approach which respects the values, beliefs, goals, expectations and preferences of the adult. In some cases the adult may be unable to provide the correct response to financial knowledge questions because they have had little or no prior exposure to financial matters.

In the interview, the QHCP:

- Establishes rapport with the adult
- Reviews the rights information from the [Adult Information Sheet](#)
- Is attentive to anything that upsets the adult
- Addresses and documents any objections to the assessment that the adult raises as many objections may be able to be remedied
- Uses their clinical judgment to determine how best to ask the most relevant questions

The structure of the interview and style of questioning will affect both the information obtained and how the person being assessed functions during the interview. Choices about structure include the style of questioning that will be employed, from very open ended narrative approaches to very structured, standardized approaches. There are strengths and limitations associated with each.

A goal in using narrative approaches is to facilitate the “narrative telling” rather than a question/answer type structure. Some strategies for doing this include:

- Ask “how” questions
- Use probes – e.g., tell me more about that

- Initially avoid questions that require yes/no responses

When using this mixed approach, begin with the more open-ended questions, then move to more specific questions.

FACTORS IN DEMONSTRATING UNDERSTANDING

★ The QHCP is cautioned to be aware of potential rote or regularly and easily repeated activities versus knowledgeable, informed and reasoned responses to questions the adult may have deep familiarity with. (For example, some adults will be able to provide information about their financial status without having a true understanding of the obligations required.) It would be unreasonable to remove the rights of an adult to manage their finances due to a lack of financial knowledge, versus an incapability to understand financial matters. The QHCP should consider asking some of the assessment details more than once during the process in order to confirm that the adult is retaining information.

The following are indicators that may be helpful when determining whether the adult understands the basic information required to make the decision(s) that need to be made about their financial affairs. During the interview the adult:

- Repeats or explains the information in their own words or manner of communication
- Gives consistent and unambiguous answers to questions
- Is able to follow/participate in the discussion about their financial affairs
- Asks pertinent questions which reflect understanding of the situation and of their financial affairs
- Decisions/choices are consistent
- Identifies necessary actions to ensure the reasonably effective management of their financial affairs

FUNCTIONAL COMPONENT ASSESSMENT FORM

The QHCP uses the Functional Component of Assessment Form to complete the assessment. The purpose of this form is to provide guidance to the QHCP who is responsible for conducting the functional component of the assessment and for making a determination about the adult's incapability. The topics covered during the assessment include:

- **Overview:** Reason for assessment, diagnoses and prognoses, social history, living situation, health and social service supports, community supports, functioning
- **Collateral Sources and Previous Collateral Test Results**
- **Functional Component Interviews and Detailed Clinical Impression:** Communication, involved QHCPs, notifications, assessment tools/financial/functional tests/screens, functioning, financial assessment information (the adult's reporting, collateral information and any discrepancies)
- **Determination:** Based on the test of incapability in the Regulation and analysis, reports, adult advised of results
- **QHCP Certification:** Identification

The lead QHCP:

- Records, verifies, organizes, summarizes and analyzes the relevant information gathered from the person being assessed, as well as from family, professional caregivers or interdisciplinary consultants and the review of objective records
- Ensures that all assessment information is clear, consistent and complete
- Gathers further information to address gaps
- Analyzes the content and makes a determination as to whether the adult is mentally incapable according to the test of incapability
- If unable to make a determination due to missing or conflicting information, documents the reasons, and outlines options for next steps such as whether the process should proceed or not, are there other options that should be reconsidered, and whether the court process should be used instead of the certificate of incapability process

ON COMPLETING THE ASSESSMENT

On completing the assessment, the QHCP who is conducting the assessment must:

[SPG Regulation s. 10(1)]

- Complete the Form 1 – AGA Report of Assessment of Incapability
- Attach the Details of Assessment which includes the following content:
 - Factors considered in making a determination of the adult’s capability or incapability
 - Conclusions reached on the basis of those factors
 - Summary of the information, if any, gathered from other sources, and
 - Other matters they believe to be relevant to the assessment

The QHCP should use the Details of Assessment form to record the details described above, which also includes space to report:

- **Reason:** For the assessment
- **Medical Component:** Who conducted it, when and the relevant diagnoses and prognoses
- **Functional Component:** Who conducted it, when the relevant factors considered and conclusions reached
- **Summary of the Determination**
- **Next Steps:** The report will be given to the health authority and/or the PGT as it may be used to consider issuing a certificate of incapability
- **Contact:** That the adult can contact the QHCP with questions and/or concerns

On completing the assessment, the QHCP must:

- Advise the adult of the details and the results of the assessment, including the determination of the adult’s capability or incapability; and
- Offer the adult a copy of the report and the details.

When the QHCP advises the adult of the results and offers the adult a copy of Form 1 – AGA Report of Assessment of Incapability and the Details of Assessment form, a copy of the Functional Component of Assessment Form is **NOT** provided to the adult. This is because the Functional

Component of Assessment Form may include the personal information of third parties that should not be disclosed to the adult.

EXCEPTION TO THE REQUIREMENT TO ADVISE ADULT OF RESULTS AND OFFER COPY OF REPORT

The QHCP is not required to advise the adult of the results or offer a copy of the report if, in the opinion of the QHCP, doing so may cause the adult serious harm or significant damage or loss to their property. *[SPG Regulation s. 10(2)]*

Examples of serious physical or mental harm include self-harm or threats of suicide or physical danger due to abuse. Significant damage or loss to the adult’s assets is situation specific – even small amounts of money to adults who are living on limited incomes is significant.

If a QHCP decides to waive the requirement to provide the required information, the QHCP should document the applicable exception(s).

The QHCP decides whether the adult can be informed verbally and/or in writing depending upon the adult’s condition and circumstances and should document their decision.

The QHCP will address the adult’s questions about the assessment, the results, and what might happen next. This can include providing written information about resources available to assist and helping the adult access services outlined at the bottom of the Adult Information Sheet.

Regardless of the determination (capable or incapable) the QHCP forwards a copy of the report (Form 1) with the Details of Assessment to the PGT.



REPORT OF ADULT’S INCAPABILITY TO THE HAD

If the QHCP determines the adult is mentally incapable of managing their financial affairs, they may report the adult's incapability to a HAD. *[AGA s. 32(2)]*

The QHCP must attach the details (using the Details of Assessment form) to the Form 1 – AGA Report of Assessment of Incapability. The QHCP may send Form 1 – AGA Report of Assessment of Incapability, the Details of Assessment, Functional Component of Assessment Form, and Medical Component of Assessment Form directly to the HAD (process in some health authorities) or to the PGT, who will provide the complete package to the HAD (process in other health authorities).

The QHCP sends the report to the PGT or the HAD depending on health authority practice and who requested it.

The PGT forwards the HAD Information Package according to health authority protocols.

This package includes:

- HAD Information Package Cover Sheet
- Summary of the PGT Investigation and any attached collateral information gathered by the PGT
- Summary of health authority investigation, if applicable
- Form 1 – AGA Report of Assessment of Incapability and Details of Assessment
- Medical Component of Assessment Form
- Functional Component of Assessment Form

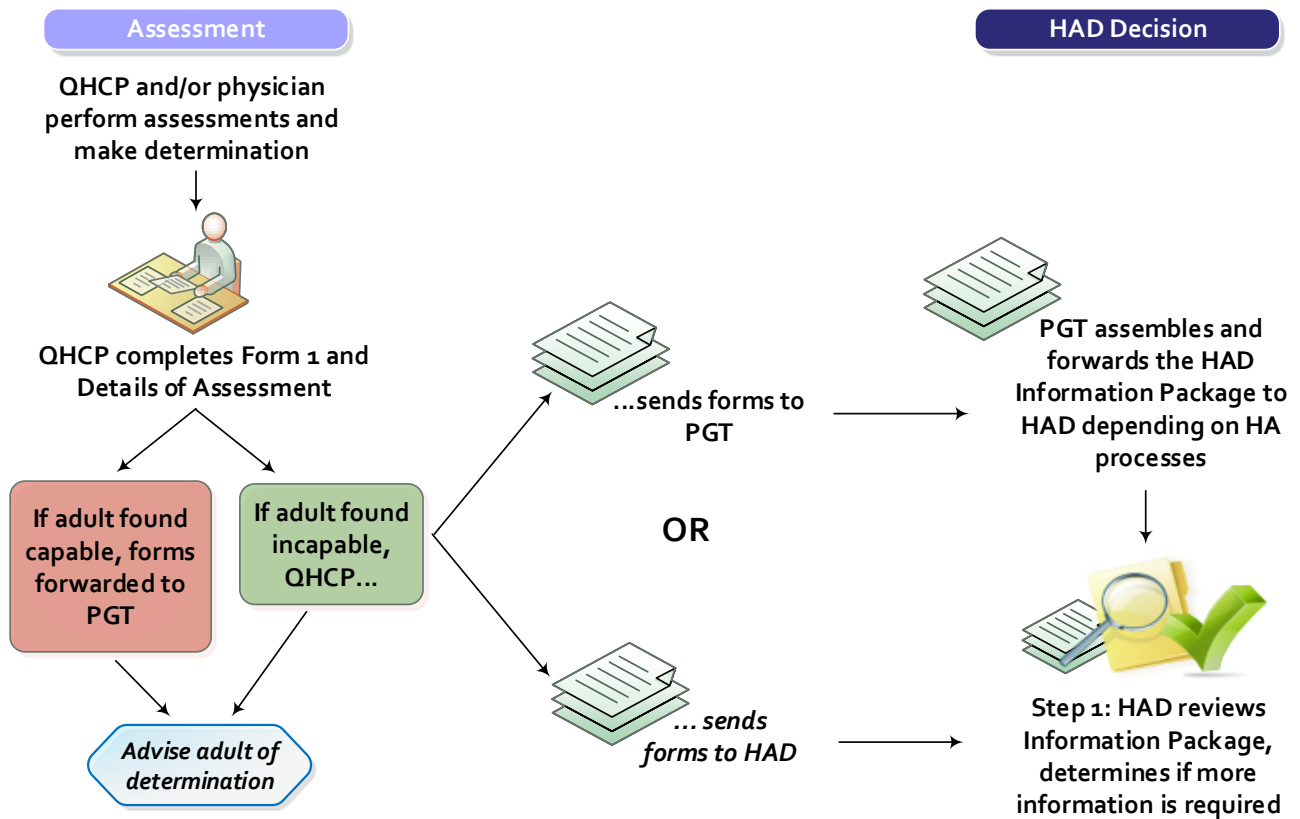
- HAD Checklist for Issuing a Certificate
- Other forms and information as relevant

The HAD Information Package should also have contact information for the purpose of notification of the spouse and near relatives.

Some health authorities will add the Functional Component of Assessment Form and Form 1 – AGA Report of Assessment of Incapability to the HAD Information Package once the package is received from the PGT. In other health authorities all components of the assessment will be provided to the PGT when they are completed and the full package will be provided by the PGT to the HAD.

The following graphic is a simple description of common steps in forwarding the necessary information to the HAD.

Health Authority Designate Package – How it is Built



PART III: HEALTH AUTHORITY DESIGNATE DECISION

WHAT IS THIS?

Part III: Health Authority Designate Decision:

- Explains the role of the HAD and how they are designated
- Outlines the Four Key Steps the HAD follows
 - Reviews the HAD Information Package and determines if additional information is required
 - Applies legal criteria to make a decision about whether to issue a certificate of incapability
 - Provides notice of the intention to issue a certificate of incapability and opportunity to respond
 - Decides whether to issue a certificate of incapability
- Explains the role of the PGT as committee of estate when a certificate of incapability is issued

This is important because...

The HAD has a significant responsibility in this process, as once a certificate is issued, the adult loses their ability to make financial decisions which means a loss of independence and autonomy for the adult. Before making a decision, the HAD needs to be satisfied that the legal criteria for issuing a certificate are met and must have considered all relevant information prior to making a decision. The HAD is also required to provide notice of the intention to issue a certificate to the adult, spouse and/or near relative(s) with the HAD's reasons, following the specific legal requirements for this process, to ensure that the individuals affected by this decision are allowed an opportunity to present additional information to oppose the certificate before it is issued.

RELATED LEGISLATION NOTED

- *Adult Guardianship Act*
- *Statutory Property Guardianship Regulation*
- *Representation Agreement Act*
- *Power of Attorney Act*
- *Patients Property Act*



RELATED FORMS AND PACKAGES

- Form 1 - AGA Report of Assessment of Incapability and Details of Assessment
- HAD Information Package Cover Sheet
- HAD Information Package
- HAD Checklist for Issuing a Certificate
- HAD Notice of Intention to Issue a Certificate



- Form 2 - Adult Guardianship Act Certificate of Incapability
- HAD's Concluding Letter

THE ROLE OF THE HEALTH AUTHORITY DESIGNATE

WHO IS A "HEALTH AUTHORITY DESIGNATE"?

The HAD has a critical role in the certificate of incapability process. The HAD is responsible for reviewing all of the information and deciding whether to issue a certificate of incapability. This important decision has a significant impact on the adult's life. Prior to making a decision the HAD should ensure they have enough information to proceed.

HOW ARE THEY DESIGNATED?

HADs are people who are designated as having authority to issue certificates of incapability under section 32 of the AGA.

A HAD may be designated in one of two ways:

- directly by the regional health board or the PHSA; or
- if the regional health board has passed a bylaw approved by the Minister of Health authorizing an employee, such as the Chief Executive Officer, to designate HADs on behalf of the board, then by that employee. *[SPG Regulation s.4]*

HAD KEY STEPS IN THE CERTIFICATE OF INCAPABILITY PROCESS

There are four elements in the process leading to a HAD decision that are presented in this section as key steps. The key steps are a combination of legal requirements and best practices. It is expected that all HADs will complete these key steps. It is also understood that HADs across health authorities will have additional related tasks and processes which are tailored to their organization's needs and environment, and to the circumstances of each case.

- 1) Review HAD Information Package and determine if additional information is required
- 2) Apply and consider criteria before making a decision to issue a certificate of incapability
- 3) Provide Notice of Intention to issue a certificate of incapability and opportunity to respond
- 4) Decide whether to issue certificate of incapability

STEP 1: REVIEW HAD INFORMATION PACKAGE AND DETERMINE IF ADDITIONAL INFORMATION IS REQUIRED

In Step 1, the HAD reviews the HAD Information Package and considers whether they have all of the information required to make a decision. If not, the HAD may contact the QHCP and/or the PGT to discuss what additional information is needed.

CONSULTATION WITH THE PGT

The HAD must consult with the PGT before issuing a certificate of incapability. *[AGA s. 32 (3.1)(a)]*
 Consultation between the HAD and the PGT ensures the HAD has all relevant information the PGT

may have, and that the PGT is willing to become the adult's statutory property guardian. It is expected there will be ongoing consultation between the health authority and the PGT throughout the process.

STEP 2: APPLY AND CONSIDER CRITERIA BEFORE MAKING A DECISION TO ISSUE A CERTIFICATE OF INCAPABILITY

In Step 2, the HAD must apply and consider the criteria outlined below. The HAD may issue a certificate of incapability if they are satisfied with **ALL** of the following: *[AGA s. 32(3)]*

- The adult needs to make decisions about their financial affairs
- The adult is incapable of making decisions about their financial affairs
- The adult needs, and will benefit from, the assistance and protection of the PGT as statutory property guardian (committee of estate)
- The adult's needs would not be sufficiently met by alternative means of assistance, and
- Either:
 - The adult has not granted power over all of their financial affairs to an attorney under an enduring power of attorney, or
 - If there is an attorney, he or she is not complying with their duties under the Power of Attorney Act

For the criteria above, matters to be considered are outlined below.

The Adult Needs to Make Decisions about Their Financial Affairs

The HAD may consider matters such as, but not limited to, whether the adult:

- Has income and/or assets that need to be managed
- Has supports or systems in place to sufficiently manage their finances
- Has financial obligations that need to be met (e.g., dependents, taxes, rent, etc.)
- Is party to, or is likely to become party to, legal proceedings where they require legal representation to protect their interests

The Adult is Incapable of Making Decisions about Their Financial Affairs

The HAD reviews Form 1 – AGA Report of Assessment of Incapability and Details of Assessment, attached details and any other relevant information provided by the QHCP who has determined that the adult is incapable of managing their financial affairs.

The Adult Needs and Will Benefit from the Assistance and Protection of the PGT as Statutory Property Guardian (Committee of Estate)

To be satisfied that an adult needs and will benefit from the assistance and protection of a statutory property guardian, the HAD may consider matters such as, but not limited to, whether:

- The adult faces likely and serious harm to their well-being, or to their financial affairs, if a statutory property guardian is not appointed
- There are sufficient informal supports in place, or whether formal legal authority is required for the management of their financial affairs (e.g., the adult needs someone to contract for services on their behalf, or sale or purchase of real property is required).

- The adult will sufficiently benefit from having a statutory property guardian to justify the associated costs (i.e., fees/expenses).
- The benefit outweighs any harm the appointment of the PGT might make (i.e., stigma, distress)
- Statutory property guardianship is being pursued because management of their financial affairs is required and not for the purposes of directing or controlling the adult’s behaviour.
- A Section 7 representation agreement is in place with sufficient authority to cover the financial needs of the adult, and there are no concerns with the representative

The focus should be on the merits of the appointment of a statutory property guardian for the benefit of the adult as opposed to solely the interest of a third party (e.g., a creditor).

The Adult’s Needs Would Not Be Sufficiently Met by Alternative Means of Assistance

To be satisfied that an adult’s needs would not be sufficiently met by alternative means of assistance, the HAD may consider matters such as, but not limited to, whether:

- Community supports are in place, or available to be put in place, to meet the adult’s needs
- An adult’s financial affairs can be arranged in a manner to meet their needs
- The adult has a supportive and appropriate relative or close friend in their life that could apply to court to become committee of estate (Review Appendix B - Options to Consider)

Enduring Power of Attorney

A certificate of incapability should only be issued if the HAD is satisfied that either:

- The adult has not granted power over all of their financial affairs to an attorney under an enduring power of attorney (EPOA) or
- If there is an attorney, the attorney is not complying with their duties under the *Power of Attorney Act* or
- If there is an EPOA, the EPOA is not sufficient for the adult’s needs (e.g., an EPOA with authority for banking only is not sufficient to deal with other assets or to sell real property)

If there is a known EPOA in place, the PGT will have investigated the actions of the attorney and determined whether the attorney is unable to comply with the statutory duties or whether the EPOA is not sufficient for the adult’s needs. The PGT will provide this information to the HAD in the PGT summary of investigation.

STEP 3: PROVIDE NOTICE OF THE INTENTION TO ISSUE A CERTIFICATE OF INCAPABILITY AND OPPORTUNITY TO RESPOND

The HAD must not issue a certificate of incapability unless they have first notified the adult and, if contact information is known to the HAD, the adult’s spouse or near relative of the adult of the intention to issue a certificate and the reasons for issuing it.

The purpose of the HAD Notice of Intention to Issue a Certificate is to explain the decision the HAD intends to make and the reasons for it, and to provide the adult with an opportunity to respond if they have concerns before the decision is made. [AGA s. 32 (3.1)(b) and (c)]

The AGA does not permit the HAD to notify anyone other than the adult, spouse and near relative (s). The HAD may choose to notify both a spouse and near relative(s) and may notify as many near relatives as they consider appropriate.

In deciding who to notify, the HAD may consider whether:

- Contact information is known
- The spouse or near relative is involved in the adult's life and/or is supportive of the adult
- The spouse or near relative is incapable, or If there are concerns the spouse or near relative may be abusing or neglecting the adult

EXCEPTION TO NOTIFICATION REQUIREMENT

The HAD is not required to provide the HAD Notice of Intention to Issue a Certificate if they have reason to believe that notification may result in serious physical or mental harm to the adult, or significant damage or loss to the adult's property. [AGA s. 32 (3.2)] Examples of serious physical or mental harm include self-harm or threats of suicide, or physical danger due to abuse. Significant damage or loss to the adult's assets is situation specific – even small amounts of money to adults who are living on limited incomes is significant. If the HAD decides not to provide notice to some parties, the HAD should consider whether it is still possible to notify other parties, for example an involved near relative .

If the HAD decides to waive the requirement to provide notice of the intention to issue a certificate of incapability, the HAD should document the applicable exception(s).

REASONS FOR ISSUING THE CERTIFICATE OF INCAPABILITY

The HAD Notice of Intention to Issue a Certificate should be in writing. Although a specific form is not required, a suggested form is included in Appendix E (See HAD Notice of Intention to Issue a Certificate). When providing the HAD Notice of Intention to Issue a Certificate, the HAD is required to provide reasons, in writing, for issuing the certificate of incapability.

The purpose for providing reasons is so the adult, spouse and near relatives are aware of the basis for the decision being made, and can respond if any of them have concerns or disagree with the information on which the decision is being made.

The reasons provided should provide sufficient detail for the adult, spouse and near relatives to understand why the HAD reached the conclusion that a certificate of incapability should be issued. What will constitute sufficient reasons will depend on the circumstances of the particular case.

In providing reasons the HAD may address the following:

- The adult needs to make decisions about their financial affairs
- The adult is incapable of making those decisions
- The adult needs and will benefit from the assistance and protection of a statutory property guardian
- The needs of the adult would not be sufficiently met by alternative means of assistance
- Either the adult has not granted power over all their financial affairs to an EPOA or they have an attorney who is not complying with their duties

HOW NOTICE AND REASONS MUST BE GIVEN AND TIME FRAMES

The notice and reasons may be given to the adult, spouse and near relative in one of the following ways: *[SPG Regulation s. 11(2)]*

- In person
- By mail, other than electronic mail, in which case the notice and reasons are deemed to have been received 7 days after mailing date
- By leaving them at the person's residence with an adult whom the HAD has reason to believe resides with the adult, in which case the notice and reasons are deemed to have been received on the date they were left

The adult, spouse and near relatives do not need to be notified by the same method so it is possible they may receive the notice at different times. The method by which each of these is notified may depend on the circumstances. The following are factors to consider when determining the appropriate way to give notice:

- Whether the adult, spouse or near relatives are accessible
- Where the near relative lives (for example, the closest near relative may live out of the country)
- The vulnerability of the adult, such as mental stress or confusion if the notice is received without an explanation, or the potential for a breach of privacy if the documents are left in a public space

OPPORTUNITY TO RESPOND AND TIME FRAME

The HAD is required to give each person who received the notice a reasonable opportunity to respond. *[AGA s. 32 (3.1)]* The adult, spouse and near relative must be given at least 10 calendar days after receiving or being deemed to have received the notice and reasons to respond to the notice and reasons. *[SPG Regulation s.11(3)]* Best practice is for the HAD to follow up with the adult, spouse and near relative(s) to confirm they received the notice. If the HAD does not receive a response by the later of the time periods given to the adult, spouse and near relatives, the HAD can proceed to issue the certificate of incapability.



The opportunity to respond is the chance for the adult, spouse or near relative to raise any concerns with the process, the information on which the HAD is basing the decision, or the reasons for the decision, before the certificate is issued.

The HAD must consider any response received before making a final decision as to whether the certificate of incapability will be issued. The HAD may need to follow up, for example, to obtain additional information, clarify information, or revisit part of the process. If new information is obtained, further consultation with the PGT should take place before a decision is made. Examples of information that could delay or result in a decision not to issue the certificate include:

- A procedural error appears to have occurred (e.g., required notifications not done)
- A family member or friend may be identified that could provide informal support to the adult or act as substitute decision maker for the adult
- New information becomes available

- There is new evidence that the adult has a treatable or reversible condition that could result in the adult not being assessed as incapable
- The adult’s situation has changed and they no longer need to make financial decisions, or the risk to them has been resolved

COUNTING DAYS

In calculating days for deeming receipt and for providing an opportunity to respond, the HAD should follow the following general rules. If there is doubt in calculating the days, the key is to be as reasonable as possible and to err on the side of giving more time.

- In calculating days exclude the first and the last day
- If the day for deeming receipt or responding to the notice of intention to issue a certificate falls on:
 - A holiday, the time is extended to the next day that is not a holiday
 - A day when the office is not open, the time is extended to the next day that the office is open
 - Saturday or Sunday, the time is extended to Monday (unless Monday is a holiday)

STEP 4: DECIDE WHETHER TO ISSUE A CERTIFICATE OF INCAPABILITY

The HAD must decide whether or not to issue a certificate of incapability:

FORM 2 – ADULT GUARDIANSHIP ACT CERTIFICATE OF INCAPABILITY

If the HAD decides to issue a certificate of incapability, the HAD must do so using Form 2 – Adult Guardianship Act Certificate of Incapability from the SPG Regulation. The HAD should take care to ensure that the form is filled out correctly and completely.

EFFECTIVE DATE

The PGT is the adult’s statutory property guardian as of the date on which the certificate of incapability was signed by the HAD who issued it. *[AGA s. 32(5)]*



FORWARDING CERTIFICATE OF INCAPABILITY TO PGT

In all cases, if the HAD issues a certificate of incapability, they must forward the certificate to the PGT. There are no exceptions to this requirement. *[AGA s. 32(4)(a)]*

As the PGT automatically becomes statutory property guardian on the date the certificate of incapability is signed, time is of the essence when communicating with the PGT. In order to ensure the PGT is notified as soon as possible, the HAD should immediately:

- Fax the Form 2 – Adult Guardianship Act Certificate of Incapability, on the same day that it is signed, to Assessment and Investigation Services at the PGT (see HAD Information Package Cover Sheet for contact information)
- Forward, by mail to the same office at the PGT:
 - The original Form 2 – Adult Guardianship Act Certificate of Incapability
 - A copy of the signed HAD Checklist for Issuing a Certificate
 - The names and contact information of the persons who were advised the certificate has been issued

- Any other package material reviewed that was not in the HAD Information Package

If there are concerns about the certificate's validity, the PGT will consult with the person coordinating the certificate process at the health authority to resolve the situation.

ADVISING ADULT, SPOUSE OR NEAR RELATIVE, AND PROVIDING COPY OF CERTIFICATE

In all cases, if the HAD issues a certificate of incapability (Form 2 – Adult Guardianship Act Certificate of Incapability), the HAD must advise the adult and, if contact information is known, the spouse and near relative(s) that a certificate of incapability has been issued, and provide the adult, spouse and near relative(s) with a copy. There are no exceptions to this requirement. *[AGA s. 32(4)(b)]* The HAD should use the HAD's Concluding Letter to the Adult/Family as a cover letter attached to the certificate of incapability.

- ★ Best practice is for the HAD to:
 - Advise the same near relative(s) that received notice of the intention to issue a certificate, unless there is a reason not to
 - Provide an indication to the adult, spouse and near relative that any information provided in response to the notice of intention was considered, and
 - Provide any additional reasons for issuing the certificate of incapability

IF THE HAD DECIDES NOT TO ISSUE A CERTIFICATE OF INCAPABILITY

If the HAD reviews the information provided by the adult, spouse or near relative and decides not to issue a certificate, the HAD should advise the adult, spouse and near relative(s) who received the notice of intent of the decision not to proceed with a certificate.

- ★ If the HAD decides not to issue a certificate of incapability, they should consult with their health authority's regional lead and the PGT to decide how best to communicate the reasons for not issuing the certificate of incapability to the adult and spouse and/or near relatives. This consultation is important because the certificate of incapability process would not have started without serious concerns about the adult's ability to manage their financial affairs.

PGT AS COMMITTEE OF ESTATE

WHEN THE CERTIFICATE IS ISSUED

The PGT becomes the adult's statutory property guardian on the date the HAD signs a certificate of incapability. *[AGA s 32(5)]* According to the PPA, the PGT, as statutory property guardian, is considered the adult's "committee of estate".

Upon receipt of a copy of the certificate of incapability from the HAD, the PGT reviews the certificate to ensure all information appears to be accurate (e.g., spelling of name, date of birth, etc.) and opens a client file.

EFFECT ON POWER OF ATTORNEY OR REPRESENTATION AGREEMENT

If the PGT becomes statutory property guardian, any enduring power of attorney or representation agreement dealing with routine management of financial affairs is suspended. *[PPA s. 19(1)]*

COMMUNICATION

On becoming the statutory property guardian, the PGT must advise the adult and spouse or near relative(s), if contact information is known, that:

- The PGT is the adult's committee of estate and may make decisions respecting the adult's financial affairs
- The adult has a right to a second assessment and a court review *[AGA s.33(2)(b)]*

The PGT also provides information to the adult, spouse or near relative (s) about the role of the PGT as committee of estate and the adult's right to reassessment.

Subject to information from the HAD or other special considerations, the PGT will provide the information to the same people who received notice from the HAD about the intention to issue the certificate and/or who received a copy of the certificate. The package is to be sent promptly unless there is a concern for the adult's health or safety. The assigned PGT case manager also follows up with the adult and arranges a visit where this information may be further explained.

POWERS AND DUTIES OF PGT AS COMMITTEE OF ESTATE

All actions and decisions made by the PGT must be for the benefit of the adult and will take the adult's personal circumstances and unique family situation into account. The PGT is guided by the principles of the AGA, and the duty to foster the adult's independence and involve the adult in decision making, to the greatest extent possible. *[PPA s. 18(2)]*

As committee of the adult's estate, the PGT has the responsibility and authority to manage the incapable adult's financial and legal affairs. (See table under Legislative Framework in the Introduction of the Guide).

On the death of the adult, the committee of estate retains authority necessary only to maintain the estate until transfer to the executor or other person authorized to administer the estate.

A committee of estate does not have authority to make decisions related to the adult's health care, placement/living arrangements or other personal decisions. In situations where there are both financial and personal/health care decisions needing to be made for an adult who has the PGT as committee of estate, recognizing that they are often closely interrelated, the PGT works collaboratively with others to ensure the best decisions possible in consideration of the adult's wishes and best interests.

FEES AND EXPENSES WHEN ACTING AS COMMITTEE

The PGT charges for the services it provides when acting as committee of estate. These charges are established by legislation. See fees information at: <http://www.trustee.bc.ca/fees/Pages/fees.aspx>. In addition, when acting as committee, there are a number of expenses paid for by the adult to ensure the safety and security of their assets. These include:

- Will searches
- Mail redirection
- Preparation of annual income tax returns
- Property inspection and/or security services if a property is vacant
- Cleaning and packing fees if the adult moves to a residential facility
- Property management company fees to oversee rental properties
- Real estate agent commissions for the sale of property

For more information on when the PGT is committee, refer to the PGT website and the publication: “When the PGT is Committee”.

PART IV: SECOND ASSESSMENT, REASSESSMENT, COURT REVIEW AND ENDING PGT AUTHORITY

WHAT IS THIS?

Part IV: Second Assessment, Reassessment, Court Review and Ending PGT Authority:

- Explains process and timing for a request for second assessment
- Outlines situations in which an adult must be reassessed and the exceptions
- Describes roles of health authorities and the PGT in coordinating second assessments and reassessments
- Explains the consequence of determination on second assessment or reassessment
- Describes the process for requesting court review of a determination of incapability
- Explains the ways that PGT authority as statutory property guardian may end

This is important because...

After a certificate of incapability has been issued, an adult has a right to request a second assessment, reassessment and court review of the determination of incapability, in accordance with the rules in the SPG Regulation. There are also a number of circumstances in which an adult must be reassessed that the health authorities and PGT need to be aware of. A second assessment and reassessment follow the same procedures and criteria as an initial assessment.

The roles and responsibilities of QHCPs and HADs continue throughout these processes and on to when statutory property guardianship may end.

RELATED LEGISLATION NOTED

- *Adult Guardianship Act*
- *Statutory Property Guardianship Regulation*
- *Representation Agreement Act*



RELATED FORMS AND PACKAGES

- Form 1 – AGA Report of Assessment of Incapability and Details of Assessment
- HAD Acceptance of Determination of Capability
- Cancellation of Certificate of Incapability



SECOND ASSESSMENT AND REASSESSMENT

An adult for whom a certificate of incapability has been issued has rights to a second assessment, reassessment and court review of the determination of incapability. Each process is outlined below. A second assessment and reassessment follow the same procedures and criteria as an initial assessment.

SECOND ASSESSMENT

An adult for whom a certificate of incapability has been issued has a right to a second assessment of their incapability. *[AGA s. 33(3)(a)]*

REQUEST FOR SECOND ASSESSMENT

Within 40 days after the date the PGT gives or sends the advice that the PGT is the adult's statutory property guardian, the adult, or a person acting on behalf of the adult, may request a second assessment of the adult's incapability. *[SPG Regulation s. 13]* If the request is made to the PGT or a health authority its staff will:

- Consult with the adult to confirm a second assessment is being requested
- If the request is made by a person acting on behalf of the adult, consult with the adult to determine if they want and are willing to participate in the assessment (ensuring they understand the process, possible outcomes and costs associated with a second assessment)

REASSESSMENTS

An adult who has the PGT as statutory property guardian must be reassessed if:

- The PGT informs the health authority that a reassessment should occur
- The adult requests a reassessment and they have not been reassessed within the preceding 12 months
- The court orders that a reassessment occur

[AGA s.34]

PGT INFORMS HEALTH AUTHORITY THAT A REASSESSMENT SHOULD OCCUR

The PGT will advise the health authority that a reassessment should occur where the PGT has information to indicate that the adult's capability may have changed. The health authority must then reassess the adult regardless of whether they have been reassessed in the last 12 months. *[AGA s. 34(b)]*

ADULT REQUESTS A REASSESSMENT

An adult who has the PGT as their statutory property guardian must be reassessed if they request a reassessment and have not been reassessed within the preceding 12 months. *[AGA s.34(c)]* The adult can request a reassessment, at any time, after the certificate of incapability is issued. If the adult's request is made within 40 days after the PGT advises the adult that the PGT is the adult's statutory property guardian, the request should be considered to be a request for a second assessment, not a reassessment. If the request is made after the 40 days, the request should be considered a request for a reassessment.

Because an adult can request a reassessment every 12 months, it is important that health authorities and the PGT record the dates of any assessments. The date of an assessment, second assessment or reassessment is the date the Form 1 – AGA Report of Assessment of Incapability is signed. The adult will have to wait 12 months from the first reassessment to request another reassessment.

COURT ORDERS REASSESSMENT

If an adult applies to court following a determination of incapability on a second assessment or reassessment, the court can order the adult to submit to an assessment of incapability (see “Court Review” below). *[AGA s.34(d)]*

PROCESS AND ROLE OF THE HEALTH AUTHORITIES AND PGT IN COORDINATING SECOND ASSESSMENT, AND REASSESSMENT REQUESTED BY THE ADULT

★ If the request for a second assessment, or a reassessment, is made to the PGT or a health authority, the PGT or health authority will assist with facilitating the assessment for the adult. Generally, the health authority that will assist in facilitating the assessment is the health authority in the area where the adult is living. If the request for a second assessment is made by a person acting on behalf of the adult, the PGT or health authority would check to confirm the adult has no dispute with the person acting on their behalf.

PGT and health authority staff will also consult with one another to determine the best manner to proceed in facilitating the assessment.

CONDUCTING THE SECOND ASSESSMENT AND REASSESSMENT

With a few exceptions, the same requirements that apply to conducting the initial assessment apply to the second assessment and reassessment.

One difference of note is in respect of the test of incapability when conducting a second assessment or reassessment. The same test that applies to the initial assessment applies to a second assessment and reassessment, but, in addition, the QHCP is required to take into consideration any changes in the adult’s incapability since the previous assessment and the adult’s understanding of those changes.

[SPG Regulation s. 9(2)]

In assessing capability on reassessment, the QHCP should also take into account that the adult has not been responsible for managing their financial affairs during the period they have had a statutory property guardian. In some cases, the PGT may make arrangements to allow the adult greater opportunity to demonstrate their level of functioning with respect to the management of the adult’s financial affairs.

★ A second assessment is similar to obtaining a second opinion. Best practice is that if possible, the second assessment be conducted by different QHCPs than those that conducted the initial assessment of incapability.

In the case of reassessment, the health authority should consider whether the reassessment can be done by the QHCP who conducted the initial assessment who is in the best position to observe

changes in the adult’s capability. However, there may be circumstances where a new QHCP is preferred, such as when the adult has raised concerns about the objectivity of the same person doing the assessment. Reassessments should be handled like initial assessments; who should conduct the reassessment depends on what makes sense in the circumstances.

The QHCP(s) conducting the second assessment or reassessment should review the prior assessment information.

CONSEQUENCE OF DETERMINATION ON SECOND ASSESSMENT OR REASSESSMENT

On completing the assessment, the QHCP should forward the Form 1 – AGA Report of Assessment of Incapability and the Details of Assessment to the HAD or the PGT, depending on health authority practice. If the PGT receives the Form 1 – AGA Report of Assessment of Incapability and the Details of Assessment, the PGT will ensure it is forwarded to the appropriate HAD. The QHCP should also offer the adult copies of both the Form 1 – AGA Report of Assessment of Incapability and the Details of Assessment.

DETERMINATION OF INCAPABILITY

In conducting a second assessment or reassessment, the QHCP must follow the same assessment procedure as outlined in Part II: Assessment. If, following a second assessment or reassessment, a QHCP determines the adult remains incapable of managing their financial affairs, the PGT continues to be their statutory property guardian. The adult may apply to the court for a review of the determination that they are incapable.

If the PGT requested the reassessment, the QHCP will advise the PGT of the determination of incapability and the PGT will advise the adult of the right for a court review of the determination.

In the case of reassessments that determine the adult continues to be incapable, which could be many years later, the PGT would use its discretion on whether to advise the health authority.

DETERMINATION OF CAPABILITY

Statutory property guardianship ends if, following the second assessment or reassessment:

- A QHCP determines that the adult is capable of managing their financial affairs and notifies the adult and the HAD of the determination
- The HAD reviews the determination and ensures the PGT and health authority have been consulted and that all relevant information has been considered, and
- The HAD accepts the determination of capability and notifies the PGT of the determination using the form HAD Acceptance of Determination of Capability

[AGA s.37(b)]

If the HAD accepts the determination, the HAD should:

- Notify the adult of the acceptance of the determination
- Inform the adult the PGT will be notified of the determination as soon as possible and that the PGT will work with the adult to transfer the control of the adult’s assets back to them

The PGT will generate the Cancellation of Certificate of Incapability.

If the HAD does not accept the determination of capability, they will need to document the reasons why and determine the next steps. This may include gathering more information, requesting explanations, asking for a component of the assessment to be repeated or for a re-evaluation. Examples of reasons why the assessment may not be accepted include the assessment did not comply with regulations governing the assessment process or there is a flaw in the assessment.

COURT REVIEW

The adult, following a determination they are incapable of managing their financial affairs on a second assessment or reassessment, may apply to the Supreme Court for a review of that determination. *[AGA s. 35]* If the adult or someone acting on their behalf applies to court, the health authority or the PGT, whoever hears about it first, should contact the other. The parties to the court review include:

- The adult who has been determined to be incapable
- The health authority that designated the HAD who issued the certificate of incapability
- If ordered by the court, a committee of person appointed by the court under the PPA

The court has authority to order the adult to attend at the time and place the court directs and submit to an assessment of incapability.

When an application is made to the court to review a determination of the adult's incapability, the court may confirm or reject the determination of incapability and order the statutory property guardianship is ended.

ENDING AUTHORITY OF THE PGT

There are a number of ways that statutory property guardianship ends: *[AGA s. 37(3)]*

- A QHCP determines that the adult is capable of managing their financial affairs following a second assessment or a reassessment, notifies the HAD and the HAD accepts the determination
- The PGT is the statutory property guardian and the PGT is satisfied that the adult no longer needs a statutory property guardian and has provided notice to the adult that they no longer need a statutory property guardian
- The court ends the statutory property guardianship under AGA s. 35
- The court appoints a committee responsible for managing the adult's affairs under the PPA

If statutory property guardianship ends, the certificate of incapability is cancelled. *[AGA s. 37(4)]* The PGT no longer has authority over the adult's financial affairs and the adult will have authority to manage their financial affairs, unless the court has appointed a person to be committee of estate under the PPA.

PGT IS SATISFIED THE ADULT NO LONGER NEEDS A STATUTORY PROPERTY GUARDIAN

PGT case managers may become aware the adult may no longer need the services of the PGT, or the adult may request the PGT consider ending its authority. The PGT will discuss this with the adult and consider relevant factors including:

- The wishes of the adult
- What has changed about the adult’s circumstances and how it has changed
- Whether the original need or reason for authority continues
- The adult’s ability to manage their financial affairs on their own
- Whether informal arrangements such as direct deposits would be sufficient
- Current diagnosis and prognosis of any relevant medical illnesses
- Likelihood of need for service in near future
- The presence of a trusted person in the adult’s life who could be authorized by the adult to make decisions or assist with decisions for routine management of financial affairs under a *s. 7 Representation Agreement* or act as pension trustee
- Risks to adult’s assets if the PGT does not stay involved

Before making a final decision, the PGT also consults with health and social supports in the adult’s life including relevant health authority staff and the adult’s physician to ensure that all information has been taken into consideration. The PGT also considers whether it may be more appropriate in the circumstances for a reassessment and confirmation of capability by the QHCP and HAD.

The PGT will end its authority on the date the PGT signs the Cancellation of Certificate of Incapability.

ADULT IS CAPABLE OF MANAGING THEIR FINANCIAL AFFAIRS

When a second assessment or a reassessment is conducted, the statutory property guardianship will end if the QHCP conducts the assessment, determines that the adult is capable of managing their financial affairs and the HAD accepts the QHCP’s determination. Before making a final decision, the HAD should confirm that the PGT and involved health authority staff have been consulted to ensure that all information is accurate. If the HAD accepts the determination, the HAD must notify the PGT using the HAD Acceptance of Determination of Capability. The PGT ends its authority on the date the HAD Acceptance of Determination of Capability is signed; therefore, this form should be faxed to the PGT the same day that it is signed.

NOTICE OF CANCELLATION BY THE PGT

If the statutory property guardianship ends, the PGT will:

- Prepare a Cancellation of Certificate of Incapability
- Generally provide the Cancellation of Certificate of Incapability to the adult, spouse and near relatives who were notified of the issuance of the certificate
- Take the necessary steps to give the adult control over their financial affairs
- Send the Notice of Cancellation to third parties such as the health authority that issued the certificate, and financial institutions to confirm the PGT is no longer acting on behalf of the adult.

ENDING STATUTORY PROPERTY GUARDIANSHIP BY COURT ORDER

The court may confirm or reject the determination of incapability and end the statutory property guardianship.

A statutory property guardianship also ends if someone in the adult's life applies to be the adult's private committee of estate under the PPA and is appointed by the court to be committee.

DEATH OF THE ADULT

On the death of the adult, the committee of estate retains authority necessary only to maintain the estate until transfer to the executor or other person authorized to administer the estate.

PART V COLLECTION AND DISCLOSURE OF INFORMATION AND RECORD KEEPING

WHAT IS THIS?

Part V Collection and Disclosure of Information and Record Keeping:

- Explains the legislation that governs the collection, use and disclosure of personal information in certificate of incapability process
- Explains the authority for collecting and disclosing information during the certificate of incapability process
- Explains the requirement to protect the identity of the reporting party by not disclosing their name or information that would identify them
- Describes the expectation for health authorities to maintain appropriate records

This is important because...

During their investigations and after the certificate of incapability process is initiated the health authorities and the PGT collect personal information from a variety of sources in order to fulfill their duties under the AGA and the PGT Act. It is important for PGT and health authority staff involved in the certificate of incapability process to clearly understand their authority to collect information including personal information and when information can be requested, shared or must be held in confidence. It is also important that health authorities are able to keep track of adults for whom their health authority has issued a certificate of incapability, and identify their QHCPs and HADs.

RELATED LEGISLATION NOTED

- *Adult Guardianship Act*
- *Public Guardian and Trustee Act*
- *Freedom of Information and Protection of Privacy Act*
- *Personal Information Protection Act*



RELATED FORMS AND PACKAGES

- Form 1 – AGA Report of Assessment of Incapability and Details of Assessment
 - Medical Component of Assessment Form
 - Functional Component of Assessment Form
-

HEALTH AUTHORITY INFORMATION MANAGEMENT AND RECORD KEEPING

During their investigations and after the certificate of incapability process is initiated the health authorities and the PGT collect personal information from a variety of sources in order to fulfill their duties under the AGA and the PGT Act. The type of information collected may be personal health information including medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation, and personal financial information about the adult's finances, income, assets, liabilities, net worth, bank balances, and financial history or activities.

The collection, use and disclosure of information during the certificate of incapability process are governed by the provisions of the *Freedom of Information and Protection of Privacy Act* (FOIPPA), the *Personal Information Protection Act*, the AGA and the PGT Act.

HADs and most QHCPs are employees of a health authority. Accordingly, they will be familiar with FOIPPA, their obligations under that legislation and their employer's internal policies around collection, use and disclosure of information. QHCPs, including physicians who are not employed by a health authority, will be guided by their professional codes of conduct and any other relevant privacy legislation including the *Personal Information Protection Act*.

This section focuses on the provisions of the AGA which deal with the rules around collecting and disclosing information during the certificate of incapability process. This section also covers health authority record keeping practices specific to the certificate of incapability process.

CAUTION: This is not legal advice. If questions arise about the application of any of these sections it is recommended that you consult with your privacy program and/or obtain legal advice.

RELATIONSHIP OF FOIPPA TO OTHER ACTS

FOIPPA is the overarching provincial legislation that governs how public bodies collect, use and disclose personal information. Other provincial acts, for example the AGA and the PGT Act, also establish rules around collection, use and disclosure of information specific to the functions outlined in those acts. The rules in FOIPPA prevail over all other acts (unless expressly stated otherwise in another act) which means that any rules around collection, use and disclosure of information are read in conjunction with FOIPPA. [FOIPPA s 79]

AGA – RIGHT TO INFORMATION

Designated agencies, QHCPs, and the PGT need to have access to information, including personal information, during the certificate of incapability process in order to perform their duties. FOIPPA authorizes the collection of personal information if the collection is authorized by another Act. [FOIPPA s. 26] Under the AGA designated agencies, QHCPs and the PGT have a right to the information necessary to perform their duties, powers and functions. [AGA s. 62(1)] Any person who has custody or control of the information required by designated agencies, QHCPs and the PGT must disclose that information to them when asked. The authority to collect information in the AGA overrides any

claim of confidentiality or privilege (except a claim based on solicitor-client privilege) and any restriction in an act or common law about the disclosure or confidentiality of information (except a restriction in section 51 of the *Evidence Act*).

Designated agencies, QHCPs and the PGT should take care not to collect personal information that is not required to fulfill their duties under the AGA during the certificate of incapability process.

AGA – DISCLOSING INFORMATION

Designated agencies and the PGT involved in the certificate of incapability process also need to disclose certain personal information during the process. While FOIPPA prohibits unauthorized disclosure of personal information, it permits disclosure of personal information where it is authorized by other legislation. [FOIPPA s. 30.4, 33.1(1) c] Under the AGA, the PGT and designated agencies may disclose information obtained under the Act for the purposes of exercising powers or performing duties or functions specified under the AGA. [AGA s. 62.1(1)]

In addition, a QHCP who performs an assessment of an adult's incapability may disclose information obtained under the AGA for the purposes of providing a Form 1 – AGA Report of Assessment of Incapability and the Details of Assessment to: [AGA s. 62.1(3)]

- The PGT
- A HAD, for the purposes of exercising the powers or performing the duties or functions of the HAD
- A designated agency, for the purposes of exercising the powers or performing the duties or functions of the designated agency under the AGA
- A person who
 - Makes a request, in writing, to the QHCP for the report, and
 - 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 the AGA (this is included because it is in the legislation but currently the sections it would apply to are unproclaimed).

Like the authority to collect information, the authority to disclose information overrides any restriction in an enactment or the common law about the disclosure or confidentiality of information.

Health authorities and the PGT should take care to only disclose personal information that is necessary to fulfill their duties under the Act.

PROTECTING THE IDENTITY OF THE REPORTING PARTY

The PGT and health authorities receive reports about vulnerable adults which may result in an investigation by the PGT or the health authority as a designated agency. As explained in the Determining Need section of this Guide, one possible outcome of an investigation is a decision to initiate the certificate of incapability process.

The PGT, health authority staff or any other person who receives a report which results in an investigation must not disclose or be compelled to disclose the identity of the person who makes the report. [PGT Act s. 17(3)], [AGA s. 46(2)]. In addition to not disclosing the name of a person who makes

a report, the PGT and the health authorities should also take care to not disclose information that would identify the reporting party.

HEALTH AUTHORITY RECORD KEEPING

In the process of determining the adults' financial incapability, personal information may be collected. The details which are not pertinent to the provision of health care should not be included in the health record.

The only forms that should become part of the health record include:

- Medical Component of Assessment Form
- Functional Component of Assessment Form

The other certificate of incapability process related forms should be included in the separate non-health record administrative file used by the health authority to keep track of documentation specifically related to the certificate of incapability process.

MAINTAINING RECORDS FOR THE CERTIFICATE OF INCAPABILITY PROCESS

Health authorities are expected to maintain in a central location:

- A list of its QHCPs and HADs
- A list of clients for whom certificates of incapability have been issued

Health authorities will make a notation on the patient record when it is known there is a statutory property guardian

APPENDICES

APPENDIX A - KEY TERMS AND DEFINITIONS

The users of the Guide should orient themselves to the following key terms and definitions. These terms are used throughout the Guide and Forms. The specific Act or Regulation from which the definition was based is indicated at the end of the specific definitions.

| Key Term | Definition and Source |
|--|--|
| Abuse | The deliberate mistreatment of an adult that causes them (a) physical or emotional harm or (b) damage or loss in respect of the adult's financial affairs. This includes intimidation, humiliation, physical assault, sexual assault, overmedication, withholding needed medication, censoring mail, invasion or denial of privacy, or denial of access to visitors. <i>[AGA s.1]</i> |
| Assessment – Medical Component | Must be conducted by a physician and consists of one or more examinations and all resulting diagnoses and prognoses relevant to the adult's incapability to manage their financial affairs. <i>[SPG Regulation s. 5(a)]</i> |
| Assessment – Functional Component | Must be conducted by a QHCP and consists of one or more evaluations of the adult's understanding of, and ability to manage their financial affairs. <i>[SPG Regulation s.5(b)]</i> |
| Second Assessment | A second assessment of the adult's incapability which may be requested by the adult, or someone acting on the adult's behalf, within 40 days of being advised that the PGT is the adult's statutory property guardian. |
| Reassessment | Reassessment is intended to consider changes in the adult's financial incapability over time and is subsequent to the initial assessment. |
| Form 1 | An assessment report made as defined in SPG Regulation. <i>[SPG Regulation s.10]</i> |
| Attorney | A person authorized by a power of attorney or enduring power of attorney to make decisions on behalf of another. <i>[AGA s.1]</i> |
| Certificate of Incapability | A certificate issued by a HAD which transfers authority for managing an adult's financial affairs to the PGT. |
| Collateral Information | Collateral information is any information obtained from third parties during the certificate of incapability process. It can |

| Key Term | Definition and Source |
|-----------------------------------|--|
| | include reports, test results, information from discussions with people in the adult’s life. Collateral information can be obtained from anyone who knows the adult including spouse, family, friends, neighbours, care and service providers, and financial institutions. <i>[Guide Content]</i> |
| Committee of Estate | An individual who has the authority to make financial, business and legal decisions on behalf of the adult. |
| Committee of Person | An individual who has the authority to make personal and health care decisions on behalf of the adult. |
| Enduring Power of Attorney | A power of attorney made under the <i>Power of Attorney Act</i> Part 2. <i>[AGA s.1]</i> |
| Financial Affairs | Includes an adult’s business and property, and the conduct of their legal affairs. <i>[AGA Part 1]</i> Financial affairs include securing assets, confirming eligibility for benefits, receiving income, paying bills, contracting for services, maintaining, purchasing and selling real property, managing investments, preparing tax returns, and appropriately providing for legal dependents. Legal responsibilities include acting as litigation guardian on civil law matters. |
| Mental Capability | An adult's ability to make decisions. This is decision specific, meaning a person might be capable of making some decisions but not others. |
| Medical Practitioner | Physician |
| Neglect | 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 to the adult’s financial affairs, and includes self-neglect. <i>[AGA Part 1]</i> |
| Observational Information | Information collected through observation of the adult. |
| Representative | A person authorized by a representation agreement to make decisions on behalf of another. <i>[AGA s.1]</i> |
| Representation Agreement | An agreement made under the <i>Representation Agreement Act</i> . <i>[AGA s.1]</i> |
| Self-Neglect | Any failure of an adult to take care of themselves that causes, or is reasonably likely to cause within a short period of time, |

| Key Term | Definition and Source |
|---|--|
| | <p>serious physical or mental harm or substantial damage or loss in respond of the adult’s financial affairs, and includes:</p> <ul style="list-style-type: none"> (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 damaged (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 (e) 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. <i>[AGA s.1]</i> |
| <p>Statutory Property Guardian</p> | <p>A person who, under AGA Part 2.1, may make decisions regarding an adult’s financial and legal affairs. <i>[AGA s.1]</i> Only the PGT can be statutory property guardian.</p> |

APPENDIX B - OPTIONS TO CONSIDER

WHEN AN INDIVIDUAL HAS DIFFICULTIES MANAGING THEIR FINANCIAL, LEGAL OR PERSONAL AFFAIRS ¹

| Term | Mechanism | Process | Who Becomes Substitute Decision Maker | Powers Granted | Mental Capability of the Individual |
|--|---|--|---|---|--|
| Informal Resolution | N/A | N/A | N/A | Examples: <ul style="list-style-type: none"> • Direct Deposit or Payment • Retirement Planning • Community Supports • Income Tax Clinics | Assume capability |
| Enduring Power of Attorney | <i>Power of Attorney Act</i> | Capable person signs a document with witnesses | Any capable adult – family, friends, trust company, and only in exceptional circumstances, the PGT | The attorney may direct on legal or financial decisions. Powers can be either general or specific. Enduring clause allows Attorney to act if donor becomes incapable | Capable (See s. 12 of the Act) |
| Representation Agreement | <i>Representation Agreement Act</i> | Adult creates individual agreement Witnessing is done in required format | Any capable adult – family, friends, trust company, and in limited circumstances, the PGT, for finances only | Depending on type and scope of agreement, representative may be authorized to make personal and health care decisions, or manage routine financial affairs, when adult is no longer able to | Section 9 agreement – Capable (See s. 10 of the Act) Section 7 agreement – Assume capability and refer to factors (See s. 8 of the Act) |
| Pension Trusteeship | Federal Income Security Programs (ISP) - standard form | One physician signs form and applicant sends to ISP | Any capable adult - family, friends, PGT | Trustee can manage monies paid through OAS/GIS/CPP only. A trustee cannot manage any other income or assets. | Mentally incapable of managing federal funds |
| Temporary Substitute Decision Maker (TSDM) | <i>Health Care (Consent) & Care Facility (Admission) Act - Part 2</i> | Health Care Provider (HCP) chooses as per hierarchy of qualified near relatives and close friends in the Act. PGT can authorize someone as TSDM or act as TSDM as last resort. | TSDM is chosen by the HCP or failing that, the PGT may authorize someone or as a last resort, make the decision | Authority to consent to or refuse the health care proposed, subject to some limitations | Mentally incapable of consenting to a specific health care decision as determined by the HCP. |
| Designated Agency (DA) - Legal Mandate to Investigate | AGA, Part 3 | DAs must look into reports of adult abuse and neglect they receive or become aware of | N/A | DAs can offer available and appropriate support and assistance. For adults who cannot get assistance on their own, DA can also use legal tools under the AGA to protect the Adult. | Presumed to be capable unless there is reason to believe adult is abused or neglected and not able to get assistance on their own because of a restraint, physical disability, or condition that impacts decision making ability |

¹ To view the source document for Options to Consider, visit <http://www.trustee.bc.ca/Documents/adult-guardianship/Options%20to%20Consider.pdf>

| Term | Mechanism | Process | Who Becomes Substitute Decision Maker | Powers Granted | Mental Capability of the Individual |
|--|--|---|---|---|--|
| PGT Investigation of attorneys, representatives, committees | <i>PGT Act</i> , s. 17, 18 | Referrals can be made to Assessment and Investigation Services (AIS) at the PGT | N/A | Authority to collect personal information. Can also apply for Committeehip if appropriate. | Reason to believe an adult is incapable of managing financial affairs |
| PGT Protective Powers | Assets protection - <i>PGT Act</i> (s. 19) | Referrals can be made to AIS at the PGT | N/A | PGT can restrict access to assets (e.g., bank accounts) for up to 30 days, renewable to a maximum of 120 days, until it is clearer what the adult's situation is, and can conduct an investigation if there is reason to believe the adult is mentally incapable and not able to make their own decisions | Must have reason to believe <ul style="list-style-type: none"> • Adult is an adult under Part 3 - abused or neglected, unable to seek support and assistance, with a condition affecting decision making • Adult's assets are at risk and in need of immediate protection. |
| Support and Assistance Court Order (Provincial Court Order) | <i>AGA</i> , Part 3 | Designated Agency asks PGT to arrange for an assessment of incapability according to Practice Guidelines. If adult assessed as incapable, DA can apply to court for order | Court may order a Support and Assistance Plan; may include 'services of PGT' or restraining order, etc. | Court can order that the adult be provided with any or all of the services outlined in the Support and Assistance Plan, e.g., admission to a care facility, restraining order. Order can be for up to 12months, renewed for up to 12 months more. | Mentally incapable of refusing support and assistance offered |
| Committee of Estate | Certificate of Incapability (<i>AGA</i> , Part 2.1) | Upon receipt of an assessment of incapability from a QHCP, a certificate of incapability is signed by a HAD | PGT only | The PGT has full responsibility for the legal and financial affairs of the adult. | Incapable of managing financial and legal affairs |
| Committee of Estate (Supreme Court Order) | Court Order (<i>Patients Property Act</i>) | Two physicians' opinions and a court hearing | Any capable adult - family, friends, trust company, PGT | The Committee has full responsibility for the financial and legal affairs of the individual and is accountable to the PGT | Incapable of managing financial and legal affairs |
| Committee of Person (Supreme Court Order) | Court Order (<i>Patients Property Act</i>) | Two physicians' opinions and a court hearing | Any capable adult (recommend family or close friend) | The Committee makes decisions regarding personal care, health care and family placement | Incapable of making personal decisions |
| Mental Health Committal | Certificate under <i>Mental Health Act</i> | One medical certificate for admittance; two certificates for committal to psychiatric facility | Director of a designated facility makes treatment and placement decisions relating to psychiatric diagnosis | Involuntary committal for psychiatric treatment - time limited | N/A |

APPENDIX C - CONTACT INFORMATION

CONTACT THE PGT

Assessment and Investigation Services and Health Care Decisions
700-808 West Hastings Street, Vancouver, BC V6C 3L3
1.877.511.4111
Fax: 604.660.9479
AIS-HCD@trustee.bc.ca

CONTACT THE HEALTH AUTHORITIES

For BC health authority contact information see:
<http://www.health.gov.bc.ca/socsec/>

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)

[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.

-
- (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.

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.

Section 48

- (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.

-
- (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.

-
- (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.

-
- (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.

-
- (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

- (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.

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.]

Section 64

- (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

(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

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

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;

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Part 4 – Certificates of Incapability

- (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;

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Part 5 – Transition

- (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

- (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

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

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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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.

APPENDIX E - FORMS

Adult Information Sheet

- Adult Information Sheet
- Protecting You From Financial Harm – Statutory Property Guardianship – A Sample Script

Assessment of Financial Incapability – Medical Component AGA Part 2.1 Form

- Medical Component of Assessment Form

Assessment of Financial Incapability – Functional Component AGA Part 2.1 Form

- Functional Component of Assessment Form

Form 1 – Adult Guardianship Act Report of Assessment of Incapability

- Form 1 – AGA Report of Assessment of Incapability

Details of Assessment

- Details of Assessment

Health Authority Designate Information Package – Certificate of Incapability AGA Part 2.1 Package Cover Sheet

- HAD Information Package Cover Sheet

Health Authority Designate – Checklist for Issuing a Certificate of Incapability

- HAD Checklist for Issuing a Certificate

Health Authority Designates – Notice of Intention to Issue a Certificate of Incapability (Section 32 (3.1) of the Adult Guardianship Act)

- HAD Notice of Intention to Issue a Certificate

Form 2 – Adult Guardianship Act Certificate of Incapability

- Form 2 – Adult Guardianship Act Certificate of Incapability

Health Authority Designate’s Concluding Letter to the Adult/Family

- HAD’s Concluding Letter to the Adult/Family

Concluding Letter: HAD Acceptance of Determination of Capability

- HAD Acceptance of Determination of Capability

Cancellation of Certificate of Incapability (Section 37(4) of the Adult Guardianship Act)

- Cancellation of Certificate of Incapability

FORM DESCRIPTION AND INTENDED USE

| Official Name | Name Used to Refer to Form in Guide and Intended Use |
|--|--|
| Adult Information Sheet | |
| <i>Guide Name</i> | Adult Information Sheet |
| <i>Intended Use</i> | To provide the adult with information about the certificate of incapability process. |
| <i>Guide Name</i> | Protecting You From Financial Harm – Statutory Property Guardianship – A Sample Script |
| <i>Intended Use</i> | A sample script intended to be used to assist HA staff in talking with adults impacted by the certificate of incapability process. |
| Assessment of Financial Incapability – Medical Component AGA Part 2.1 Form | |
| <i>Guide Name</i> | Medical Component of Assessment Form |
| <i>Intended Use</i> | The form the physician completes while conducting a medical examination, summarizing their diagnoses and prognoses relevant to financial incapability. |
| Assessment of Financial Incapability – Functional Component AGA Part 2.1 Form | |
| <i>Guide Name</i> | Functional Component of Assessment Form |
| <i>Intended Use</i> | The form the QHCP completes while conducting a functional evaluation, summarizing their determination about the adult’s incapability. |
| Form 1 – Adult Guardianship Act Report of Assessment of Incapability | |
| <i>Guide Name</i> | Form 1 – AGA Report of Assessment of Incapability |
| <i>Intended Use</i> | An assessment report as defined in SPG Regulation s. 10. <i>[SPG Regulation s. 1]</i> The prescribed form that the lead QHCP completes which summarizes their determination about the adult’s incapability after both assessment components are complete and which is usually offered to the adult. |
| Details of Assessment | |
| <i>Guide Name</i> | Details of Assessment |
| <i>Intended Use</i> | To be attached to Form 1 to summarize the assessment. Details include the reason for the referral, the findings of the medical and functional components of the assessment and the final determination. |
| Health Authority Designate Information Package – Certificate of Incapability AGA Part 2.1 Package Cover Sheet | |
| <i>Guide Name</i> | HAD Information Package Cover Sheet |
| <i>Intended Use</i> | To provide the HAD with all necessary documents for review (a) when considering whether to issue a certificate of incapability (b) for second |

| Official Name | Name Used to Refer to Form in Guide and Intended Use |
|---|--|
| | assessment and reassessment reviews and (c) to provide key contact information. |
| Health Authority Designate – Checklist for Issuing a Certificate of Incapability | |
| <i>Guide Name</i> | HAD Checklist for Issuing a Certificate |
| <i>Intended Use</i> | To help the HAD consider all relevant factors in making a decision whether to issue a certificate of incapability under Part 2.1 of the AGA. |
| Health Authority Designate – Notice of Intention to Issue a Certificate of Incapability (Section 32 (3.1) of the Adult Guardianship Act) | |
| <i>Guide Name</i> | HAD Notice of Intention to Issue a Certificate |
| <i>Intended Use</i> | Advises the adult, spouse or near relative(s) of the intention to issue a certificate of incapability, and informs the adult that they have ten days to respond to the HAD with any further information they wish to have considered. |
| Form 2 – Adult Guardianship Act Certificate of Incapability | |
| <i>Guide Name</i> | Form 2 – Adult Guardianship Act Certificate of Incapability |
| <i>Intended Use</i> | Form 2 is the prescribed form that the HAD completes to issue the certificate of incapability which confirms that the PGT is the adult’s statutory property guardian. |
| Health Authority Designate’s Concluding Letter to the Adult/Family | |
| <i>Guide Name</i> | HAD’s Concluding Letter to the Adult/Family |
| <i>Intended Use</i> | Used as a cover letter, attached to Form 2, Certificate of Incapability, to advise the adult, and their spouse or near relative(s) of the HAD’s decision to issue a certificate of incapability and that the PGT is the adult’s statutory property guardian. |
| Health Authority Designate – Acceptance of Determination of Capability | |
| <i>Guide Name</i> | HAD Acceptance of Determination of Capability |
| <i>Intended Use</i> | Letter from HAD to the PGT confirming determination of capability and requesting cancellation of the certificate of incapability. |
| Cancellation of Certificate of Incapability (Section 37(4) of the Adult Guardianship Act) | |
| <i>Guide Name</i> | Cancellation of Certificate of Incapability |
| <i>Intended Use</i> | Completed by the PGT. Notifies the adult that the certificate of incapability is cancelled and the reason for the cancellation. |

Adult Information Sheet and Sample Script

ADULT INFORMATION SHEET

ASSESSING AN ADULT'S ABILITY TO MANAGE THEIR FINANCIAL AFFAIRS

UNDERSTANDING THE CERTIFICATE OF INCAPABILITY PROCESS - ADULT GUARDIANSHIP ACT

PART 2.1

This process is guided by principles about treating people well.

There are two main phases in the process:

- The Assessment
- A Certificate of Incapability

ONE: THE ASSESSMENT

1. When Is An Assessment Needed?

- An assessment may be needed if there are concerns that you are not able to manage your financial affairs,
- There is no one else available to assist you, and
- There are important financial matters in your life that need to be taken care of.

2. What Is An Assessment Used For?

- The purpose of the assessment is to determine if you are incapable of managing your finances.
- If the result of the assessment is that you are found to be incapable -then the Public Guardian and Trustee may be appointed to manage your finances.

3. How Is An Assessment Done?

- An assessment has two parts; a medical exam and a functional evaluation.
- Usually the medical exam is done first.
- The medical exam is always done by a doctor.
- The functional evaluation may be done by a doctor or another professional (called a Qualified Health Care Provider).
- The doctor and the Qualified Health Care Provider are called assessors.
- Assessor/s may collect information from many sources but will always try to meet with you to determine your understanding of your financial situation.

4. What Are Your Rights During The Assessment Process?

- Unless it will cause you serious harm, you are always entitled to information about what the assessment is for, the results, and what the outcome might be.
- You can ask a support person to be present with you during the assessment (or part of it).
- You may refuse to participate (although the assessment might still be done using other information)
- The final assessor will tell you the results.
- You may have a copy of the assessment report when completed.
- You may ask questions and discuss concerns about the assessment.

ADULT INFORMATION SHEET

ASSESSING AN ADULT'S ABILITY TO MANAGE THEIR FINANCIAL AFFAIRS

TWO – CERTIFICATE OF INCAPABILITY

1. If a certificate is to be issued:

- The results will be sent to a person who works for a Health Authority (the Health Authority Designate). This person has to decide whether to issue a certificate of incapability.
- If the Health Authority Designate is satisfied with the results and other information about your need for assistance, they will send a notice in writing to you and your spouse or other family member, unless it will cause you harm. The notice will say that they plan to issue a certificate of incapability.
- The written notice will explain why the health authority designate plans to issue a certificate of incapability.
- You and your spouse or near relative (family member) will have an opportunity to respond to the notice before the certificate is issued.
- If the health authority designate decides to go ahead with issuing a certificate of incapability you and your spouse or family member will be sent a copy.
- Once a certificate is issued - the Public Guardian and Trustee is your committee of estate to manage your finances.
- The Public Guardian and Trustee will advise you and your spouse or near relative (family member) of your right to ask for another assessment.
- If the result of that assessment is that you are found capable, the Health Authority Designate will inform the Public Guardian and Trustee and the certificate will be cancelled. This means the Public Guardian and Trustee will return control of your financial affairs to you.

2. More Information

- More information is available on the Public Guardian and Trustee's website: www.trustee.bc.ca
- Other people that may be able to provide information/assistance include:
 - PGT staff
 - Your doctor or other assessors
 - Your health care case manager or social worker if you have one
 - Your lawyer
 - Family/friends

Protecting You From Financial Harm – Statutory Property Guardianship

A Sample Script

Your money and things you own may need to be **protected**:

- A concern has been raised about your ability to **manage** your money and things you own
- **Help** is available if you need it
- You will be **assessed** by a doctor and possibly another assessor
- The assessment may be used in the decision to **appoint** the Public Guardian and Trustee as your Property Guardian

Your **rights**:

You have the right to:

- **ask** questions
- have a person that you **trust** with you (as long as they don't interfere)
- **say** no, but the assessment may happen without your input
- **challenge** the assessment findings
- **request** a second opinion or reassessment
- **receive** a copy of the assessment report – unless the assessor thinks it will cause you serious harm

The **assessment**:

- has **two parts**
 - medical
 - functional
- the **medical** is done by a doctor
- the **functional** is done by an assessor who has been trained specially
- **other people** may also provide information (like the bank, landlord, friends, family)
- is only about your ability to manage your **money and things you own**

What does this **mean** for you?:

- if the assessment finds that you need **help** to manage your money and things you own, the Public Guardian and Trustee may be **appointed** to manage your money and things you own

Who is the **Public Guardian and Trustee**?

- it is a public body that **protects** the legal and financial interests of adults who require assistance
- they have strict rules **under the law** that they have to follow
- they do **charge fees** for their services and they will let you know what they are
- they must involve you in the decision they are making

What happens after the assessment?

- you will be told by your assessor what their **opinion** is
- if the opinion is that you need help, a designated person from the Health Authority will send you **a letter** telling you that they are considering issuing a Certificate of Incapability

A **Certificate of Incapability** does two things:

- it removes your authority to manage your money and things you own
- it **appoints** the Public Guardian and Trustee as “Property Guardian” to manage these things for you

If a Certificate of Incapability is being considered you and your family (if appropriate) will be:

- **notified** of the intent of the Health Authority to issue a certificate.
- **told**, in writing, why the decision was made
- given **time** to respond to the notice
- given information about **your rights** and options

Except when:

- the assessor believes that giving you information will put you or your money at **more risk** then they may choose to protect your money and things you own **before** telling you

What happens **next**?:

- If the designated person from the Health Authority decides it is best to issue a Certificate of Incapability, they will send you **another letter** telling you that a Certificate of Incapability has been issued which puts the Public Guardian and Trustee in charge of your money
- the Public Guardian and Trustee will send you a letter telling you how to **contact** them

Who to call?:

If you have concerns or questions about this process you are welcome to call:

| | |
|---------------------------------|--------------|
| Public Guardian and Trustee | 604.660.4444 |
| Assessor | |
| Case Manager or Social Worker | |
| Doctor | |
| Your Lawyer | |
| Trusted friend or family member | |
| Health Authority Key Contact | |
| Other | |

Medical Component of Assessment Form



A complete assessment report includes this Medical Component form, the Functional Component form, and Form 1 called the AGA Report of Assessment of Incapability. PLEASE NOTE: if you are a physician and are conducting both the Medical and Functional Components of the assessment, we do acknowledge some overlap between the two forms. The purpose of this form is to provide guidance to medical practitioners in documenting the results of the medical examination relevant to coming to diagnoses and prognoses relevant to financial incapability.

The information on this form is collected under the authority of the Adult Guardianship Act and Statutory Property Guardianship Regulation Information collected may be used for the purpose of authorizing the Public Guardian and Trustee to act as Statutory Property Guardian under Part 2.1 of the Adult Guardianship Act. If you have any questions about the collection and use of this information, please contact the PGT.

Attach additional pages if more space is needed. Upon completion you may send a copy to the adult named in this form.

1. ADULT BEING EXAMINED

Last Name First Name Initial

Date of Birth (YYYY / MM / DD) Personal Health Number (PHN)

2. EXAM AND PHYSICIAN INFORMATION

Date of Exam (YYYY / MM / DD) Location of Exam Program Name (if applicable)

Type of Assessment Under the Certificate of Incapability Process
Initial Assessment Second Assessment Reassessment

Last Name of Physician Completing This Medical Exam First Name of Physician Initial

How long have you known the adult? Are you the adult's primary physician?
Yes No - specify relationship:

What language was used to conduct the exam? Is this the adult's first language? If no, was a translator used?
Yes No Yes No

Was a support person present? If yes, please provide name of support person
Yes No

Were there communication barriers? e.g., sight, hearing, language, literacy, responsiveness, use of vocabulary
Yes No

If Yes, please specify the barrier and list any communication enhancements that were used to address the barriers.

3. NOTIFICATION AND ADULT'S UNDERSTANDING

Section 6 of the Statutory Property Guardianship Regulation requires that before conducting the medical or functional component of the assessment, that the adult be advised of all of the following (see the only exceptions below):

- that the adult is being assessed to determine whether the adult is incapable of managing that adult's financial affairs;
that the assessment may be used to determine whether the adult will have or continue to have, a statutory property guardian;
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;
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;
that if the assessment is completed, the adult may have a copy of the assessment report from the person who completes the report; (Note: this form is not the Report)
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.

EXCEPTIONS - If you did not advise the adult of all of the above, was it because:

- you have reason to believe it may result in serious physical or mental harm to the adult, OR
you have reason to believe it may result in significant damage or loss to the adult's property.

IMPORTANT NOTE:

This form is the medical component of the assessment only. It is NOT the final complete assessment which must also include the functional component of the assessment form with the result summarized in Form 1 (AGA Report of Assessment of Incapability) completed by the responsible qualified health care provider.

NOTIFICATION AND ADULT'S UNDERSTANDING continued**What does the adult say about each of the following?**

| | |
|---|--|
| Reasons leading to this assessment process | |
| Patient's Personal History (note collateral information if different) | |
| Patient's Family History (note collateral information if different) | |
| Patient's Medical History (note collateral information if different) | |
| Patient's Medication (note collateral information if different) | |

Functional Inquiry

Advise of any functional Information relevant to financial management and decision making – e.g. changes in sight/hearing, functioning, supports, use of substances, ADLs.IADLs, risk taking.

4. MENTAL HEALTH STATUS

| Attitude | Affect | Thought Content | Perceptions |
|---|--|---|---|
| <input type="checkbox"/> Cooperative <input type="checkbox"/> Indifferent <input type="checkbox"/> Resistive <input type="checkbox"/> Demanding <input type="checkbox"/> Suspicious <input type="checkbox"/> Hostile | <input type="checkbox"/> Appropriate <input type="checkbox"/> Anxious <input type="checkbox"/> Euphoric <input type="checkbox"/> Labile <input type="checkbox"/> Angry <input type="checkbox"/> History of mood swings <input type="checkbox"/> Blunted <input type="checkbox"/> Depressed <input type="checkbox"/> Inappropriate <input type="checkbox"/> Other <hr/> | <input type="checkbox"/> Normal <input type="checkbox"/> Phobias <input type="checkbox"/> Obsessions <input type="checkbox"/> Preoccupations <input type="checkbox"/> Delusions <input type="checkbox"/> Persecutory <input type="checkbox"/> Guilt <input type="checkbox"/> Not able to assess <input type="checkbox"/> Other <hr/> | <input type="checkbox"/> Normal <input type="checkbox"/> Hallucinations <input type="checkbox"/> Auditory <input type="checkbox"/> Visual <input type="checkbox"/> Other <hr/> |
| Cognition | Executive Functioning | Other | |
| <input type="checkbox"/> Normal <input type="checkbox"/> Impairment <input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe <input type="checkbox"/> Standardized Cognitive Tests <input type="checkbox"/> MMSE <input type="checkbox"/> MOCA <input type="checkbox"/> Other <hr/> | <input type="checkbox"/> Insight <input type="checkbox"/> Good <input type="checkbox"/> Adequate <input type="checkbox"/> Poor <input type="checkbox"/> Problem Solving <input type="checkbox"/> Good <input type="checkbox"/> Limited <input type="checkbox"/> Poor <input type="checkbox"/> Behavioural Activation <input type="checkbox"/> Motivated <input type="checkbox"/> Independent <input type="checkbox"/> Apathetic <input type="checkbox"/> Disengaged <input type="checkbox"/> Disinhibited <input type="checkbox"/> Impulsive | | |

Indicate any other relevant tests that have been completed, or any other relevant information

5. MEDICAL STATUS RELEVANT TO INABILITY TO MANAGE FINANCIAL AFFAIRS**Current Medical Status: Diagnoses** (medical, mental health, surgical)

Comment on other collateral information you reviewed or collected over time to form your diagnoses.

Current Medical Status: Prognoses (medical, mental health, surgical)**Applicable to second/reassessment only**

If this medical examination is for reassessment purposes please indicate what has changed with respect to the adult's diagnoses/prognoses since the last medical assessment if available.

6. CONCLUSION ABOUT DIAGNOSIS / PROGNOSIS

Does the adult have diagnoses and prognoses that may contribute to the adult's incapability to make financial decisions?

Yes No

Given the adult's diagnoses and prognoses, Is the adult's ability to manage his or her financial affairs likely to improve?

Yes No

Additional Comments

7. PHYSICIAN SIGNATURE

Signature

Telephone

Fax

Print Name

Date Signed (YYYY / MM / DD)

Email

Functional Component of Assessment Form





This form assists the qualified health care provider (QHCP) in completing the AGA Report of Assessment of Incapability (Form 1) and Details of Assessment attachment, and is submitted to the health authority designate (HAD) along with all collateral information as part of the package for making a determination regarding the issuing of a Certificate of Incapability; this form is not attached to the AGA Report of Assessment of Incapability or Details of Assessment.

The information on this form is collected under the authority of the Adult Guardianship Act and Statutory Property Guardianship Regulation. Information collected may be used for the purpose of authorizing the Public Guardian and Trustee (PGT) to act as Statutory Property Guardian under Part 2.1 of the Adult Guardianship Act. If you have any questions about the collection and use of this information, please contact the PGT.

PART ONE: OVERVIEW

| | | | |
|-------------------|--------------------|--------------------------------|------------------------------|
| Adult's Last Name | Adult's First Name | Date of Birth (YYYY / MM / DD) | Personal Health Number (PHN) |
|-------------------|--------------------|--------------------------------|------------------------------|

Type of Assessment under the Certificate of Incapability Process

Initial Assessment Second Assessment Reassessment

Reason for Assessment / Presenting Problem Relating to Concerns About Financial Management (including any concerns about vulnerability to abuse, time sensitivities, e.g. PGT protective measures in place.)

Past Medical / Psychiatric History

Current Medical / Psychiatric Diagnosis and Prognosis from Medical Component of Assessment

Attached Yes No

Date of Most Recent Medical / Psychiatric Exam (YYYY / MM / DD)

Additional Comments

PART ONE: OVERVIEW continued

| | |
|--------------|------------|
| Birthplace | Education |
| Spirituality | Occupation |

Languages

Living Situation Alone Spouse Family Other (specify)

Home Group Assisted Living Care Facility Other (specify)

Living Conditions (describe the adult's living environment including any safety issues or other concerns)

Involved Health and Social Service Professionals (list if not included in PGT summary of investigation) (List QHCPs on page 3)

| Name | Title | Phone Number |
|------|-------|--------------|
| | | |
| | | |
| | | |
| | | |

Community Supports (e.g. relatives, friends, spiritual affiliation, community group membership, etc.)

| Name of Contact | Relationship | Phone Number |
|-----------------|--------------|--------------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

PART TWO: COLLATERAL SOURCES AND PREVIOUS COLLATERAL TEST RESULTS

The purpose of this section is to record the contact information for any person (family, friends, neighbours, service providers, support people, etc.) specific to this assessment of incapability that you as QHCP have contacted to obtain information about the adult’s ability to manage their financial affairs. The detailed information should be recorded in the summary of observations/findings and in the work table found in Part Four of this form. Collateral information is information collected by the QHCP in addition to that provided in the PGT Summary of Investigation to compare for consistency with information provided by the adult.

| Name | Relationship / Role | Frequency of Contact With Adult | Phone Number |
|------|---------------------|---------------------------------|--------------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Assessment Tools and Results from Collateral Sources
 (Mini Mental State Examination (MMSE), Montreal Cognitive Assessment (MOCA), Geriatric Depression Scale (GDS), InterRAI Assessment Instrument (RAI), Other - repeat full information for each tool used)

| | | |
|----------------------|-----------------------|--------------|
| Tool | Date (YYYY / MM / DD) | Conducted By |
| Result(s) / Comments | | |

| | | |
|----------------------|-----------------------|--------------|
| Tool | Date (YYYY / MM / DD) | Conducted By |
| Result(s) / Comments | | |

| | | |
|----------------------|-----------------------|--------------|
| Tool | Date (YYYY / MM / DD) | Conducted By |
| Result(s) / Comments | | |

Assessment Without Adult

Was either component of the assessment completed solely on the basis of observational or collateral information?

Medical Component: Yes No If Yes, state reason: _____

Functional Component: Yes No If Yes, state reason: _____

PART THREE: FUNCTIONAL COMPONENT INTERVIEWS AND DETAILED CLINICAL IMPRESSION

Date(s) and Location(s) of Interview(s)

Communication Aides

Name of Support Person in Attendance

Phone Number

Name of Interpreter

Phone Number

Other Qualified Health Care Professionals Involved in the Functional Component

| Name | Role | Phone Number |
|------|------|--------------|
| | | |
| | | |
| | | |
| | | |
| | | |

Notifications

Section 6 of the Statutory Property Guardianship Regulation requires that before conducting the medical or functional component of the assessment that the adult be advised of all of the following (see the only exceptions below):

- that the adult is being assessed to determine whether the adult is incapable of managing that adult's financial affairs;
- that the assessment may be used to determine whether the adult will have or continue to have, a statutory property guardian;
- 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;
- 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;
- that if the assessment is completed, the adult may have a copy of the assessment report from the person who completes the report (Note: this refers to Form 1 in the Regulation + a summary of the assessment. This does not refer to this form).
- 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.

EXCEPTIONS – If you did not advise the adult of all of the above, was it because:

- you have reason to believe it may result in serious physical or mental harm to the adult, OR
- you have reason to believe it may result in significant damage or loss to the adult's property.

Functioning (describe the adult's functional ability)

| | |
|--|--|
| Mobility | |
| ADLs (Activities of Daily Living) ¹ | |
| IADLs (Instrumental Activities of Daily Living) ² | |

PART THREE: FUNCTIONAL COMPONENT INTERVIEWS AND DETAILED CLINICAL IMPRESSION continued

| Assessment Information | Adult's Report / Collateral Details / Notes / Concerns |
|---|--|
| <p>Income (employment, benefits, business, pension, other) Please identify your source of income</p> | |
| <p>Regular Bills Can they explain the meaning and purpose of bills: Please identify the amounts owed on your bills Please explain how to question the amount on a bill Please explain the consequences of unpaid bills</p> | |
| <p>Debts Please identify all debts held</p> | |
| <p>Assets Please identify all of your valuables</p> | |
| <p>Business and Investments Please identify any business and investment holdings</p> | |
| <p>Obligations to Dependents Please identify your responsibilities to your dependents</p> | |
| <p>Assistance in Managing Finances Please describe any assistance you receive with managing your finances (family, accountant, lawyer, trustee, other)</p> | |
| <p>POA, Representation Agreement, Trusteeship, or Committee Which of these do you have in place (if any)?</p> | |
| <p>Will/Estate Planning Do you have a will or have you done any other type of estate planning for what happens to your assets when you die?</p> | |

PART THREE: FUNCTIONAL COMPONENT INTERVIEWS AND DETAILED CLINICAL IMPRESSION continued

| | |
|---|--|
| <p>Taxes Do you know who does your taxes?</p> | |
| <p>Bank Account(s) What are some of the ways you spent money during this month?</p> | |
| <p>Credit Card Do you have a credit card? How do you make payments?</p> | |
| <p>Mode of Transportation for Banking How do you do your banking/get to your bank?</p> | |
| <p>Use of Cheques How do you manage your finances? (daily/weekly/monthly)?</p> | |
| <p>Use of Debit Card How do you manage your finances? (daily/weekly/monthly)?</p> | |
| <p>Ever Run Out of Money for Food/Shelter How do you pay for food, rent/mortgage (cash, cheque, debit, credit card)?</p> | |
| <p>Carry Money in their Wallet How do you pay for things (cash, cheque, debit, credit card)?</p> | |
| <p>Do Any People in the Adult's Life Ask for Money Does anyone in your life regularly ask you for money? (if so who)</p> | |

PART THREE: FUNCTIONAL COMPONENT INTERVIEWS AND DETAILED CLINICAL IMPRESSION continued**Assessment Tools Used and Results by QHCP during this assessment to evaluate the adult's financial decision making incapability**

(Mini Mental State Examination (MMSE), Montreal Cognitive Assessment (MOCA), Geriatric Depression Scale (GDS), InterRAI Assessment Instrument (RAI), Other - repeat full information for each tool used)

| | | |
|------|-----------------------|--------------|
| Tool | Date (YYYY / MM / DD) | Conducted By |
|------|-----------------------|--------------|

Result(s) / Comments

| | | |
|------|-----------------------|--------------|
| Tool | Date (YYYY / MM / DD) | Conducted By |
|------|-----------------------|--------------|

Result(s) / Comments

| | | |
|------|-----------------------|--------------|
| Tool | Date (YYYY / MM / DD) | Conducted By |
|------|-----------------------|--------------|

Result(s) / Comments

Financial Functional Tests / Screen(s) Used and Results by QHCP during this assessment to evaluate the the adult's financial decision making ability
(e.g. writing a cheque, interpreting a bill, calculating and making change)

| | | |
|------|-----------------------|--------------|
| Test | Date (YYYY / MM / DD) | Conducted By |
|------|-----------------------|--------------|

Result(s) / Comments

Use this space to record details such as: Is there evidence of problems with managing finances? Are there historical changes in the adult's pattern of financial management? Is there risk taking in managing finances and if so steps are being taken to mitigate risk? Does the adult realize that the financial issues discussed apply to them?

PART FOUR: DETERMINATION – ASSESSMENT OF INCAPABILITY

Under Section 9 of the Statutory Property Guardianship Regulation, an adult is incapable of managing the adult’s financial affairs if, in the opinion of a qualified health care provider, any of the following apply.

| Test of Incapability – tick and comment on any that apply | Details |
|--|----------------|
| <input type="checkbox"/> 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 dependents, if any | |
| <input type="checkbox"/> the adult cannot understand the decisions that must be made or and actions that must be taken for the reasonable management of the adult’s financial affairs | |
| <input type="checkbox"/> the adult cannot understand the risks and benefits of making or failing to make particular decisions or taking or failing to take particular actions respecting their financial affairs | |
| <input type="checkbox"/> the adult cannot understand that the information referred to above applies to the adult | |
| <input type="checkbox"/> the adult cannot demonstrate that he or she is able to implement, or direct others to implement, the decisions or actions referred to in b) above | |
| <p><i>Applicable to Second and Reassessment only</i></p> <input type="checkbox"/> If this functional component of assessment is for second or reassessment purposes, please indicate what has changed with respect to the adult’s diagnosis/prognosis and functioning since the last functional component (if available). | |

PART FOUR: DETERMINATION – ASSESSMENT OF INCAPABILITY continued

Determination

- The adult is capable of making decisions about his or her financial affairs
- The adult is incapable of making decisions about his or her financial affairs
- I am unable to provide an opinion based on available information and recommend further assessment

Assessment Report (required by Section 10(a) and (b) of the Statutory Property Guardianship Regulation)

I have:

- completed the AGA Report of Assessment of Incapability and Details of Assessment (Form 1)
- attached the Details of Assessment to the AGA Report of Assessment of Incapability and Details of Assessment (Form 1), which includes:
 - a) the factors that were considered in making the determination of incapability and
 - b) the conclusions that were reached on the basis of those factors
 - c) a summary of the information, if any, gathered based on observational information
 - d) any other matter the qualified health care provider believes to be relevant to the assessment

Adult Advised of Results

Advising the adult of the details and results of the assessment and offering a copy of the AGA Report of Assessment of Incapability (Form 1) and Details of Assessment is required by Sections 10 (c) and (d) of the Regulation unless the QHCP has reason to believe that providing the information may result in serious physical or mental harm to the adult or significant damage or loss to the adult's property.

I have:

- advised the adult of details and results of the assessment, including the determination of the adult's capability or incapability
- offered the adult a copy of the Form 1 report and the attached details

I have not advised the adult of the details of and results of the assessment because:

- I have reason to believe it may result in serious physical or mental harm to the adult OR
- I have reason to believe it may result in significant damage or loss to the adult's property

| | |
|---|---------------------------------------|
| Name of Support Person Providing Notification | Date of Notification (YYYY / MM / DD) |
|---|---------------------------------------|

Method of Notification

CERTIFICATION

I certify that I am a Qualified Health Care Provider under Part 2.1 of the AGA.

| | |
|--|----------------------------------|
| Position | Health Authority (if applicable) |
| Professional Designation <input type="checkbox"/> Physician <input type="checkbox"/> Registered Social Worker <input type="checkbox"/> Registered Nurse <input type="checkbox"/> Registered Psychiatric Nurse <input type="checkbox"/> Registered Psychologist <input type="checkbox"/> Registered Occupational Therapist <input type="checkbox"/> Nurse Practitioner | Signature |
| | Print Name |
| | Date Signed (YYYY / MM / DD) |

COMMENTS AND ADDITIONAL NOTES

Form 1 - AGA Report of Assessment of Incapability

Note. The Details of Assessment should be attached to this form.





Adult Guardianship Act
FORM 1: REPORT OF ASSESSMENT OF INCAPABILITY

(Section 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, _____ am a qualified health care provider
(name and profession)
under the *Adult Guardianship Act*.

I confirm that I have assessed _____, born _____
(name of adult) *(date of birth of adult - YYYY / MM / DD)*
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 _____ is:
(name of adult)

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

Details of the assessment are attached. (attach securely to this form all supporting documents)

| | | |
|---|--|------------|
| Signature of Qualified Health Care Provider | Name of Qualified Health Care Provider | |
| | Address | |
| Date Signed (YYYY / MM / DD) | Telephone Number | Fax Number |

Details of Assessment

Note. This form should be attached to Form 1 – AGA Report of Assessment of Incapability





TO:

| | |
|---------------|-----------------------|
| Name of Adult | Date (YYYY / MM / DD) |
|---------------|-----------------------|

| |
|---------|
| Address |
|---------|

Purpose of Assessment

- 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*

I was asked to conduct an assessment due to the following difficulties you are having with managing your financial affairs:

As a result of these concerns, you were assessed to determine whether you are incapable of managing your financial affairs. The assessment included a medical component and a functional component.

I am writing to give you the results of this assessment. I am required to complete the attached assessment report (Form 1) and provide you with the following additional details:

- The factors that were considered in making my determination
- The conclusions that were reached on the basis of those factors
- A summary of any information gathered if the assessment was conducted without your participation
- Any other matter I believe is relevant.

The purpose of this letter is to provide you with a summary of the additional details listed above.

MEDICAL COMPONENT OF THE ASSESSMENT

| | |
|--|-------------------------------------|
| Doctor Who Conducted the Medical Component of the Assessment | Date of Assessment (YYYY / MM / DD) |
| <p>The doctor named above considered whether you have any diagnoses and prognoses that may contribute to your incapability to manage your financial affairs and whether your ability to manage your financial affairs is likely to improve. The doctor concluded that:</p> | |

FUNCTIONAL COMPONENT OF THE ASSESSMENT

| | |
|--|-------------------------------------|
| Qualified Health Care Provider(s) Who Conducted the Functional Component of the Assessment | Date of Assessment (YYYY / MM / DD) |
| <p>The Qualified Health Care Provider(s) named above conducted the functional component of the assessment. As part of this process, information was obtained about how you are managing your financial affairs. The following is a summary of the clinical impression of your ability to manage your financial affairs and the information considered.</p> | |

ADDITIONAL RELEVANT INFORMATION (*attach a separate sheet if needed*)

In making the determination on page 4, the following information and factors were considered.

DETERMINATION

Based on the assessment information I obtained and reviewed, I considered whether any of the following criteria apply to your situation. The law says that if **any** of the following apply to your situation, I am required to determine that you are incapable of managing your financial affairs. It is my determination that those ticked apply to your situation:

- You cannot understand the nature of your financial affairs, including the approximate value of your business and property and the obligations you owe to your dependents
- You cannot understand the decisions that need to be made or actions that must be taken to reasonably manage your financial affairs
- You cannot understand the risks and benefits of making or not making particular decisions or taking or not taking particular actions
- You cannot understand that the information referred to above applies to you
- You cannot demonstrate that you are able to implement or direct others to implement the decisions necessary to manage your financial affairs

I have determined that you are:

- Capable of managing your financial affairs
- Incapable of managing your financial affairs

I will be providing this information to the person or people listed below.

Depending on the purpose of the assessment (initial, second or reassessment), the information will be used to:

- Consider whether or not to issue or continue with an existing certificate of incapability resulting in the Public Guardian and Trustee of BC being your statutory property guardian to manage your financial affairs
- Consider whether or not to accept the determination of capability resulting in the Public Guardian and Trustee of BC transferring the control of your finances back to you.

Name of Health Authority Designate Receiving Information

Name of Regional Consultant at the Public Guardian and Trustee Receiving Information

If you have any questions or concerns please contact me.

| | | |
|---|--|-----|
| Signature of Qualified Health Care Provider | Name of Qualified Health Care Provider | |
| | Address | |
| Date Signed (YYYY / MM / DD) | Phone | Fax |

- cc: Regional Consultant at the Public Guardian and Trustee of BC
- cc: Spouse and/or Near Relatives
- cc: _____

HAD Information Package Cover Sheet





HEALTH AUTHORITY DESIGNATE INFORMATION PACKAGE COVER SHEET FOR CERTIFICATE OF INCAPABILITY AGA PART 2.1

The purpose of this cover sheet is to provide the health authority designate with contact information and with a list of all the necessary documents for review in considering whether to issue a Certificate of Incapability or for review for Acceptance of Determination of Capability.

1. ABOUT THE ADULT

Form section 1 containing fields for Last Name, First Name, Middle Name, Maiden Name, Alias, Gender, Date of Birth, Personal Health Number, Current Location, Address of Current Location, and Name of Hospital or Facility.

2. PURPOSE OF REVIEW AND REQUIRED DOCUMENTS

Form section 2 containing checkboxes for 'HAD to review for' and 'Acceptance of Determination of Capability on:'.

Table with 3 columns: Documents Required, Attached by PGT (name), Attached by Health Authority (name). Rows include PGT Summary of Investigation, Medical Component of Assessment, Functional Component of Assessment, Form 1 with Details of Assessment attached, Health Authority Designate Checklist, and Previous Assessment(s).

3. URGENCY: IMPORTANT DATES

Table with 3 columns: Specify Commitment, Date (YYYY / MM / DD), Comments. Rows include PGT Protective Measures in place until, Date Form 2 Certificate of Incapability must be completed, and Other - Specify.

4. KEY CONTACTS FOR NOTIFICATION

Table with 4 columns: Name, Relationship, Mailing Address, Telephone. Header row: Spouse and/or Near Relative(s) Previously Notified (adult children, parents, adult siblings, grandparents or any other adult related by birth or adoption).

5. KEY CONTACTS FOR NOTIFICATIONS: SPECIAL INSTRUCTIONS

Have any previous notifications to the adult been waived due to serious physical or mental harm or significant damage or loss to the adult's property?
Please explain.

Please list any spouse or near relatives who were purposefully **not** notified throughout the process, and the reason(s).

If known, what is the best way for HAD to notify the adult?

6. ADULT'S INVOLVED CLINICAL AND AGENCY SUPPORTS

| Name and Role | Agency | Mailing Address | Telephone |
|--|--------|-----------------|-----------|
| Family Physician | | | |
| | | | |
| Medical Component of Assessment – Physician | | | |
| | | | |
| Functional Component of Assessment QHCP | | | |
| | | | |
| Form 1 – Report of Assessment of Incapability QHCP | | | |
| | | | |
| Other | | | |
| | | | |
| | | | |
| | | | |

7. COVER SHEET AND HAD PACKAGE INFORMATION

| | | |
|--|--------|-----------------------|
| Cover Sheet and HAD Package Initiated By | | Date (YYYY / MM / DD) |
| Position | Agency | |
| Address | | |
| Phone | Fax | Email |

HAD Checklist for Issuing a Certificate





NOTE: This is a checklist to assist the health authority designate in considering all relevant factors in making a decision to issue a Certificate of Incapability or a decision to accept a Determination of Capability on second or reassessment under Part 2.1 of the Adult Guardianship Act.

ADULT'S INFORMATION

Last Name, First Name, Middle Name

STEP 1 Review the Health Authority Designate Information Package and Determine if Additional Information is Required

The following forms and materials should be received and reviewed:

- Health Authority Designate Information Package - Certificate of Incapability AGA Part 2.1 Package Cover Sheet
PGT Summary of Investigation and any attached collateral information gathered by the PGT
Form 1 AGA Report of Assessment of Incapability, with Details of Assessment attached
Medical Component of the Assessment Form
Functional Component of the Assessment Form
Other - please specify

STEP 2 Apply and Consider Criteria Before Making a Decision to Issue a Certificate of Incapability

The health authority designate has considered and is satisfied that all of the following apply:

- The adult needs to make decisions about their financial affairs
The adult is incapable of making those decisions
The adult needs, and will benefit from, the assistance and protection of the PGT as Statutory Property Guardian (Committee of Estate)
The needs of the adult would not be sufficiently met by alternative means of assistance, and either:
a) The adult has not granted power over all of their financial affairs to an attorney under an enduring power of attorney, or representative under a representation agreement, or
b) If there is an attorney or representative, they have not been complying with their duties under the Power of Attorney Act
Consultation has occurred between the health authority designate and the PGT

STEP 3 Provide Notice of the Intention to Issue a Certificate of Incapability and Opportunity to Respond

Adult and spouse and/or near relative(s) have been provided with Notice of the Intention to Issue a Certificate of Incapability, including reasons.

- Yes No

Concerns raised by adult, spouse and/or near relative(s) have been addressed.

- No concerns raised Yes, concerns addressed

STEP 4 Make and Communicate Decision

1. The health authority designate decides:

- To issue a certificate of incapability, using Form 2 - Adult Guardianship Act Certificate of Incapability, or
To not issue a certificate of incapability

If the decision is to issue a certificate:

- Date, sign and fax Form 2 Certificate of Incapability to PGT and mail original certificate to PGT; and
Provide copy of Certificate of Incapability to adult and spouse and/or near relative(s) with the Health Authority Designate's Concluding Letter

If the decision is to not issue a certificate:

- Communicate decision to adult, PGT, and health authority contacts to not issue certificate of incapability

2. Decide whether to accept a Determination of Capability on Second or Reassessment

- if yes, date, sign and fax the Acceptance of Determination of Capability to PGT
if no, notify the QHCP and follow health authority protocol

HEALTH AUTHORITY DESIGNATE INFORMATION

Health Authority Designate Signature, Phone Number, Fax Number, Print Name, Date Signed (YYYY / MM / DD), Address

HAD Notice of Intention to Issue a Certificate





HEALTH AUTHORITY DESIGNATE
NOTICE OF INTENTION TO ISSUE
A CERTIFICATE OF INCAPABILITY
AGA PART 2.1

Date (eg, Apr 3, 1982)

TO: Name of Recipient

Address, Postal Code

RE: Name of Adult (Last Name, First Name) Date of Birth (eg, Apr 3, 1982)

This is my notice that I intend to issue a certificate of incapability for the adult listed above. My reasons for this decision are:

Large empty rectangular box for providing reasons for the decision.

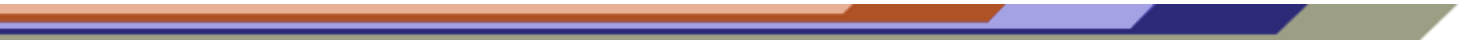
If a certificate of incapability is issued, the Public Guardian and Trustee of BC will become statutory property guardian for the adult and may make decisions respecting his/her financial affairs.

If you wish to respond to this notice, for example, by correcting or providing information to be taken into consideration before a final decision to issue a certificate of incapability is made, please send a response to or contact me on or before the response date listed below.

Response Date (eg, Apr 3, 1982)

Table with 3 rows and 2-3 columns for signature, name, address, date, phone, and fax.

Form 2 – Adult Guardianship Act Certificate of Incapability





Adult Guardianship Act
FORM 2: CERTIFICATE OF INCAPABILITY

(Section 32 of the *Adult Guardianship Act*, Section 10 of the Statutory Property Guardianship Regulation)
(to be completed by a health authority designate)

A Certificate of Incapability is issued for _____, born _____.
(name of adult) *(date of birth of adult - YYYY / MM / DD)*

The Public Guardian and Trustee of British Columbia is the statutory property guardian for
_____, and may make decisions respecting his/her financial affairs,
(name of adult)
as of the date on which this Certificate of Incapability was signed.

I, _____ am a health authority designate, designated by
(name and position of health authority designate)

_____, and I am satisfied of all of the matters
(prescribed body)
set out in section 32 (3) (a) to (e) of the *Adult Guardianship Act*.

| | | |
|---|--|------------|
| Signature of Health Authority Designate | Printed Name of Health Authority Designate | |
| | Address | |
| Date Signed (YYYY / MM / DD) | Phone Number | Fax Number |

HAD's Concluding Letter to the Adult/Family



Date (eg, Apr 3, 1982)

TO: Name of Recipient

Address, Postal Code

RE: Name of Adult (Last Name, First Name) Date of Birth (eg, Apr 3, 1982)

I provided you with notice of my intention to issue a certificate of incapability, the reasons for my decision and an opportunity to respond.

Date of Original Letter (eg, Apr 3, 1982) Date Response Required By (eg, Apr 3, 1982)

- You [] responded and provided additional information. [] did not respond with additional information.

I have considered any additional information that was provided to me.

Please be advised that I have completed my review and in order to protect your financial affairs, I have determined that a certificate of incapability is necessary, for

- [] the original reasons provided. [] the additional reasons attached.

The effect of the certificate is that the Public Guardian and Trustee of BC has authority and responsibility to manage your financial affairs as your statutory property guardian.

The original copy of the certificate has been forwarded to the Public Guardian and Trustee of BC and a photocopy of it is attached.

If you have any questions about the process please do not hesitate to contact me.

Table with 3 columns: Signature of Health Authority Designate, Name of Health Authority Designate, Address, Date Signed (eg, Apr 3, 1982), Phone, Fax

Enc.: photocopy of Certificate of Incapability

- [] cc: Regional Consultant at the Public Guardian and Trustee of BC [] cc: Spouse and/or Near Relative(s) [] cc: _____

HAD Acceptance of Determination of Capability





Date (eg, Apr 3, 1982)

TO: Name of Recipient at the Public Guardian and Trustee of BC

Address, Postal Code

RE: Name of Adult (Last Name, First Name) Date of Birth (eg, Apr 3, 1982)

The adult named above was assessed as being incapable of managing their financial affairs and a certificate of incapability was issued.

Date certificate of incapability issued (eg, Apr 3, 1982)
(signature date from Form 2 - Certificate of Incapability)

The adult named above had a second assesment or reassessment and the determination of the qualified health care provider is that he/she is capable of managing his/her financial affairs.

Date of Second Assessment/Reassessment (eg, Apr 3, 1982)
(signature date from Form 1 for the Second Assessment/Reassessment)

The qualified health care provider notified me, a health authority designate, of the determination of capability, and I am accepting the determination. The Public Guardian and Trustee of BC should now proceed to issue a Cancellation of Certificate of Incapability to the adult named above informing him/her that the Public Guardian and Trustee of BC is no longer acting as statutory property guardian.

Table with 3 columns: Signature of Health Authority Designate, Name of Health Authority Designate, Address, Date Signed (eg, Apr 3, 1982), Phone, Fax

Enc.: most current Form 1: AGA Report of Assessment of Incapability with Details Attached and Medical and Functional Component Forms

cc: Regional Consultant at the Public Guardian and Trustee of BC

cc:

Cancellation of Certificate of Incapability

This form is only to be completed by the Public Guardian and Trustee of BC. For verification of a cancellation of a certificate, please contact the Public Guardian and Trustee at

604-660-4507; 1-877-511-4111; or AIS-HCD@trustee.bc.ca.
