

# What BC's Adult Guardianship Laws Say About Who Decides

Presentation to  
Gerontological Nurses Association of BC  
Annual Conference

**Seniors Living at Risk - Whose Choice is it Anyway?**  
**April 4, 2014**

**Our Vision:**

Rights, choices and security for all British Columbians.

**Our Mission:**

The Public Guardian and Trustee is appointed to safeguard and uphold the legal and financial interests of children; manage the legal, financial and personal care interests of adults needing assistance in decision making; and administer the estates of deceased and missing persons.



# Learning Objectives

- Quick overview of Adult Guardianship Law as a package
- Highlight key upcoming changes
- Review range of substitute decision makers for domains of decision making in the Adult Guardianship Legislation:
  - Financial/legal
  - Personal/health care
- What SDMs can decide, including the PGT
- Questions/Discussion

# BC's Adult Guardianship Laws

*Adult  
Guardianship  
Act*

*Public Guardian  
and Trustee Act*

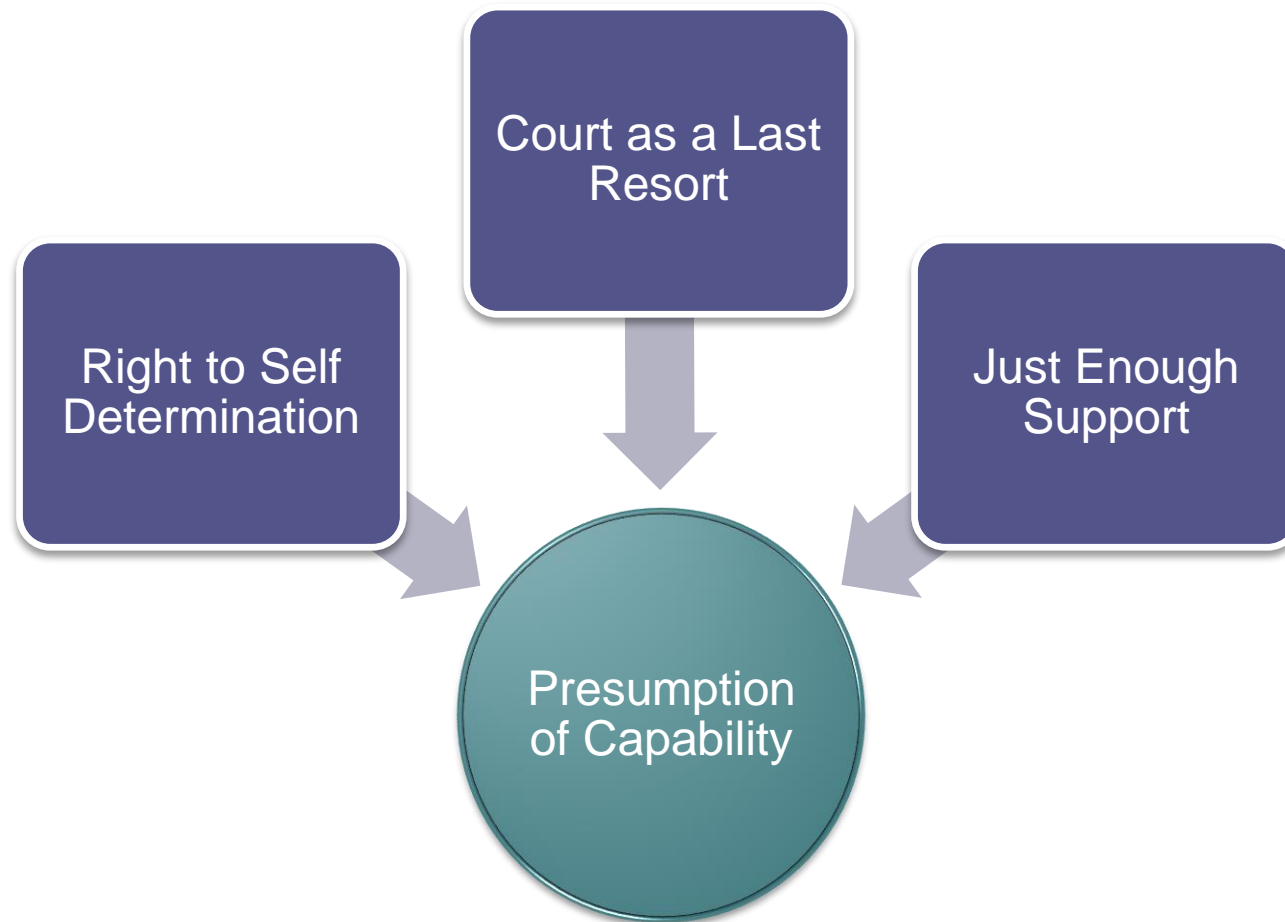
*Power of  
Attorney Act*

*Representation  
Agreement Act*

*Health Care  
(Consent) and  
Care Facility  
(Admission) Act*

*Patient's  
Property Act*

# Guiding Principles



# Continuum of Self-Determination

- Adult decides, informal supports as needed
- A substitute the adult chooses by planning ahead decides – **this is where our focus will be today**
- Someone else decides, depending on the circumstances because –
  - The plans have fallen through, or
  - There were no plans in place...and a decision needs to be made

# Informal Resolutions

- Working with the adult so they can decide is a top priority
- Examples:
  - taking time to speak with adult
  - direct deposit and/or bill payment
  - involving supportive family/friends
  - involving community and/or social supports
  - making home environment safer

# Domain – Financial/Legal

- **Enduring Power of Attorney** – Power of Attorney Act
- **Representation Agreement s. 7** – Representation Agreement Act
- **Pension Trusteeship** – arrangement through Service Canada
- **Committee of Estate** - Patients Property Act
  - Court
  - Certificate of Incapability – soon to be under **Adult Guardianship Act**

# Attorney in an Enduring Power of Attorney

- Attorneys are named by the adult – trusted family member, friend, trust company, limits on who can be paid
- Made when fully mentally capable
- “Enduring” - effective even if the adult is no longer mentally capable
- Specific to certain kinds of financial/legal decisions or all encompassing
- Adult authorizes attorney to make **financial & legal decisions only** on adult’s behalf –
  - paying bills
  - doing banking
  - managing investments
  - selling assets such as house/condo
  - hiring lawyer to start a legal action
- Attorneys must follow duties
- **PGT can investigate concerns about attorneys not following their duties if there is reason to believe the adult may be incapable (Assessment and Investigation Services)**



# Attorney in an Enduring Power of Attorney

## Duties:

- Act in adult's best interest
- Act honestly and in good faith
- Act prudently
- Consider current and known wishes
- Give priority to adult's personal and health care
- Invest according to Trustee Act: "Prudent Investor" rules

## Cannot:

- Make or change a will
- Delegate decision making except for investments
- Mix assets

## Restrictions on:

- gifting, loans, donations
- Making/changing beneficiary designations

# Representative in Representation Agreement s. 7

- Representatives are named by the adult – trusted family member, friend
- Often in place if there is some diminished capacity
- Representative can make routine financial management decisions but not:
  - use or renew credit cards or a line of credit
  - take out a mortgage on your home
  - purchase or sell real estate for you
  - guarantee a loan
  - lend your personal property or give it away
  - revoke or amend a beneficiary designation
  - act as a director of a company on your behalf
- Representatives must follow duties
- **PGT can investigate concerns about representatives not following their duties if there is reason to believe adult is incapable (Assessment and Investigation Services)**

# Representative in Representation Agreement s. 7

## Duties:

- Act honestly and in good faith
- Exercise the care, skill and diligence of a reasonably prudent person
- Only make decisions authorized to make
- Consult with adult to determine current wishes
- Keep records of the decisions made and related information
- Keep a current list of assets and liabilities, accounts and other records
- Keep invoices, bank statements and tax returns required to create a full accounting of receipts and disbursements

# Pension Trustee in a Federal Government Pension Trusteeship

- A trusted family member or friend can be appointed by Service Canada as pension trustee if the adult needs someone to manage their financial affairs and they only have federal government pension income (OAS, GIS, CPP, War Veterans Allowance)
- A signed certificate from one medical doctor is required, verifying that the adult is incapable of managing his or her affairs
- **Duties:** to administer pension benefits in the adult's best interests, maintain yearly records and must be prepared to provide an accounting report
- **Both PGT and ISP may be involved when there are concerns (Assessment and Investigation Services)**

# Committee of Estate – Court Appointed

- Court can appoint applicant (family member, friend, trust company or on occasion the PGT) or someone nominated by the adult when capable
- Based on two medical opinions
- PGT is served notice of all applications to Court
- A court ordered Committee of Estate can manage all of the adult's financial/legal affairs subject to any restrictions in the Order and has duties
- **PGT monitors private committees by passing accounts of private committees and can investigate concerns (Private Committee Services)**

# PGT as Committee of Estate – Certificate of Incapability Process

- CI Process results in PGT being adult's Committee of Estate - financial/legal decisions
- Ombudsperson Report – “No Longer Your Decision” - includes recommendations to bring AGA Part 2.1 Dec 1, 2014
- PPA still in force for court appointed committees

## **New changes re: AGA Part 2.1:**

- de-linked from Mental Health Act – new role of HADs
- more notifications throughout the process
- guidance on conducting assessments of incapability – medical exam and functional component by QHCPs
- right of appeal to a finding of incapability – reassessment, Court
- new CI Guidelines being collaboratively developed
- online training from the MOH

# Committee of Estate

## Duties:

**New legislative requirement - must foster independence and involve adult in decision making**

- Secure assets and income
- Manage a budget
- Meet legal obligations
- Prepare income tax returns
- Prepare accounts for review by the PGT or court

Unless limited by the court, responsibilities also include:

- Buy or sell the adult's property
- Enter into contracts
- Operate any existing businesses
- Bring or defend any lawsuits

## Cannot:

- Consent to marriage or divorce
- Make a will
- Vote
- Consent to drive
- Adopt

# Domain – Health/Personal Care

- Capable Adult
- Advance Directive – Health Care (Consent) and Care Facility (Admission) Act
- Temporary Substitute Decision Maker (TSDM) - Health Care (Consent) and Care Facility (Admission) Act
- Committee of Person – Court Appointed – Patients Property Act
- Representation Agreement s 9 and s. 7 – Representation Agreement Act



# Advance Directive

- AD stands alone **without naming a Substitute Decision Maker (SDM)**
- An adult who is 19 or older can choose to make an AD
- AD is now a legally recognized document
- Adult consents to, or refuses, specified health care treatment in advance
- Test – “nature and consequences”
- If there is a SDM, AD is a pre-expressed wish

# Temporary Substitute Decision Maker (TSDM) for Health Care Decisions

The first available who qualifies can make most major & minor decisions/follow duties:

- Spouse
- Child
- Parent
- Sibling
- Grandparent \*
- Grandchild \*
- Anyone related by birth or adoption
- Close friend \*
- Person immediately related by marriage \*
- **PGT can authorize or make the decision**



# Temporary Substitute Decision Maker (TSDM) for Health Care Decisions

## Duties:

- Consult with adult
- Consult with near relatives offering to help
- Follow pre-expressed capable wishes
- If wishes unknown, best interests –
  - adult's current wishes, beliefs, values
  - improvement with or without the treatment
  - benefit outweighs harm
  - less intrusive option as beneficial

## Cannot :

- Consent to procedures on restricted list
- Consent to life supporting care and treatment unless substantial agreement among health care team
- Consent to care facility admission
- Decide who visits adult
- Decide about use of restraints
- Limits on info sharing

# Committee of Person - Court Appointed

- Court can appoint applicant (family member, friend, or **on very rare occasions the PGT**) or someone nominated by the adult when capable
- Based on two medical opinions
- PGT is served notice of all applications to Court
- A court ordered Committee of Person can make any personal and health care decisions subject to any restrictions in the Order and has duties
- PGT and or DA may be involved if there are concerns

# Committee of Person

## Can decide:

- Personal care
- Health care
- Moving
- Personal interactions
- Care facility admission

## Cannot decide:

- Consent to marriage or divorce
- Make a will
- Vote
- Consent to drive
- Adopt

# Representatives in Representation Agreements

## s. 9 – majority of health and personal care – adult names rep

- Can decide about all forms of major and minor health care except for those prescribed
- Includes deciding about to life supporting care and treatment
- Can make personal care decisions
- Includes care facility admission \*
- Can consent to the use of restraints if specifically noted in RA \*\*
- PGT or DA may be involved if concerns

## s. 7 – restrictions on personal and health care – adult names rep

- Can decide about **most** forms of major and minor health care except for those prescribed
- **Does not** include deciding about life supporting care and treatment
- Can make personal care decisions
- **Does not** include care facility admission, but other housing \*
- **Cannot** consent to the use of restraints \*\*
- PGT or DA may be involved if concerns

# Other Domains

- Mental Health Act Committals
- Abuse, Neglect and Self-Neglect
- Residential Issues

# Thank you & Questions?

**LeeLane Asher** - Regional Manager

**Alison Leaney** – Provincial Coordinator Vulnerable Adults  
Community Response

“How You can Help” and “It’s Your Choice”  
[www.trustee.bc.ca](http://www.trustee.bc.ca) under Adult Guardianship