



A Fine Balance – Fostering Independence and Involvement in Decision Making with Adults In Need of Service from the Public Guardian and Trustee (PGT)

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Community Response
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- Adult Guardianship – what is it?
- Assessment and Investigation Services
- Private Committee Services
- Client Services
- Health Care Decisions

Involvement of the Adult

BC's Adult Guardianship Laws



*Adult Guardianship
Act*

*Public Guardian
and Trustee Act*

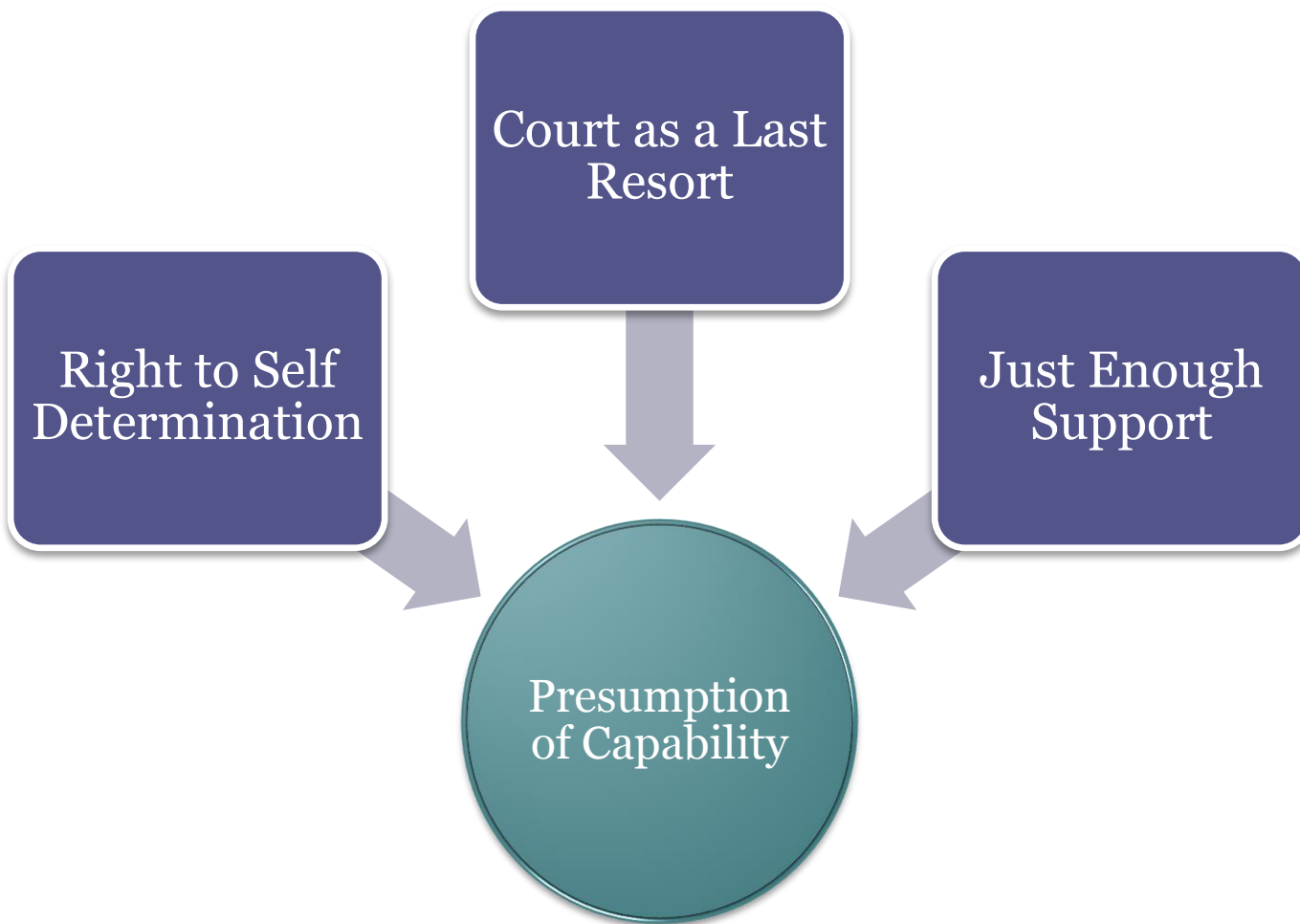
*Power of Attorney
Act*

*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 decides – chosen by the adult
- A substitute decides – Committee of Estate or Pension Trustee

- **Financial:**
 - Attorney (Enduring Power of Attorney)
 - Representative (Representation Agreement) for routine financial affairs – s. 7 of RAA
 - Committee of Estate
 - Pension Trustee (Federal pensions)
- **Non-financial:**
 - Representative (personal and health care decisions) – s. 7 and s. 9 of RAA
 - Committee of person (personal and health care)
 - Temporary substitute decision maker (health care)

“A Committee must to the extent reasonable, foster the independence of the adult and encourage the adult’s involvement in any decision-making that affects the adult.”

Personal Planning Options

	Advance Directive	Enduring POA	RA7 Financial	RA7 Personal & Health	RA9 Personal & Health	Committee of Estate	Committee of Person
Financial	No	Yes	Routine Management	No	No	Yes	No
Legal	No	Yes	Limited	No	No	Yes	No
Personal Care	No	No	No	Yes (limited)	Yes	No	Yes
Health Care	Yes	No	No	Yes (limited)	Yes	No	Yes

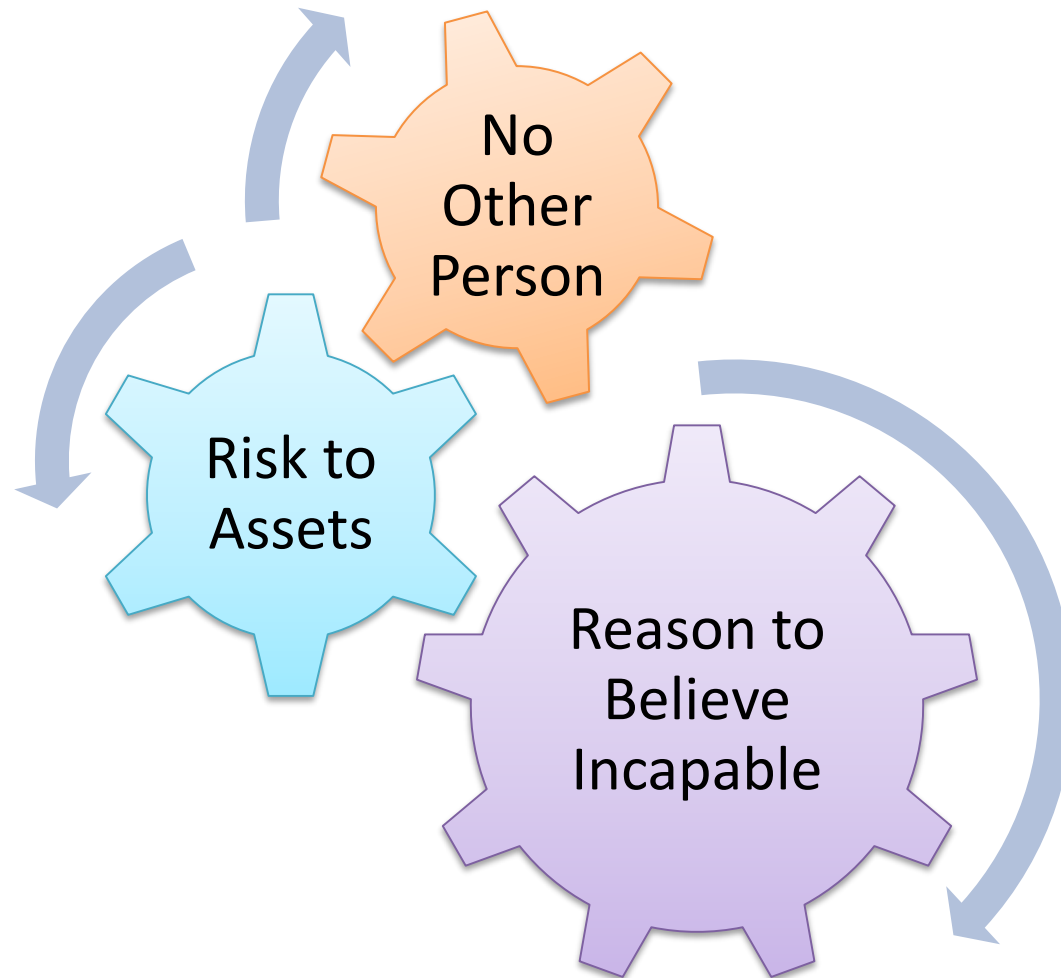
Note: New Sept 1, 2011 – Advance Directives to refuse/consent to specific health care.

- 8 Regional Consultants in 3 offices:
Vancouver, Kelowna and Victoria
- 1400 referrals per year – PGT becomes
Committee of Estate for approximately
350
- Investigate allegations of abuse, neglect
or self neglect

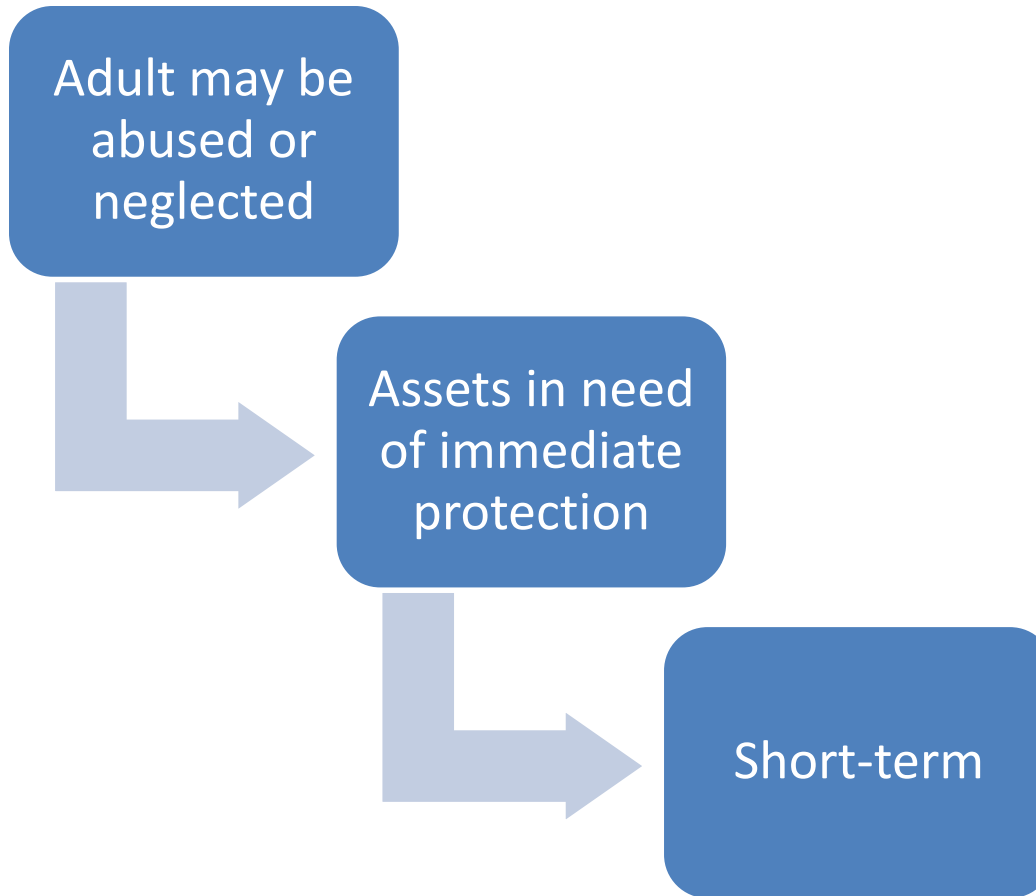
The Regional Consultant:

- Consults on complex risk situations involving abuse, neglect or self-neglect of vulnerable adults
 - **financial, legal and personal**
- Provides information and guidance for formal and informal options to resolve situations
- Investigates actions of trustees, representatives, or attorneys under Power of Attorney when the adult is allegedly incapable and concerns about financial management have been raised
- Coordinates assessments for Support and Assistance court orders

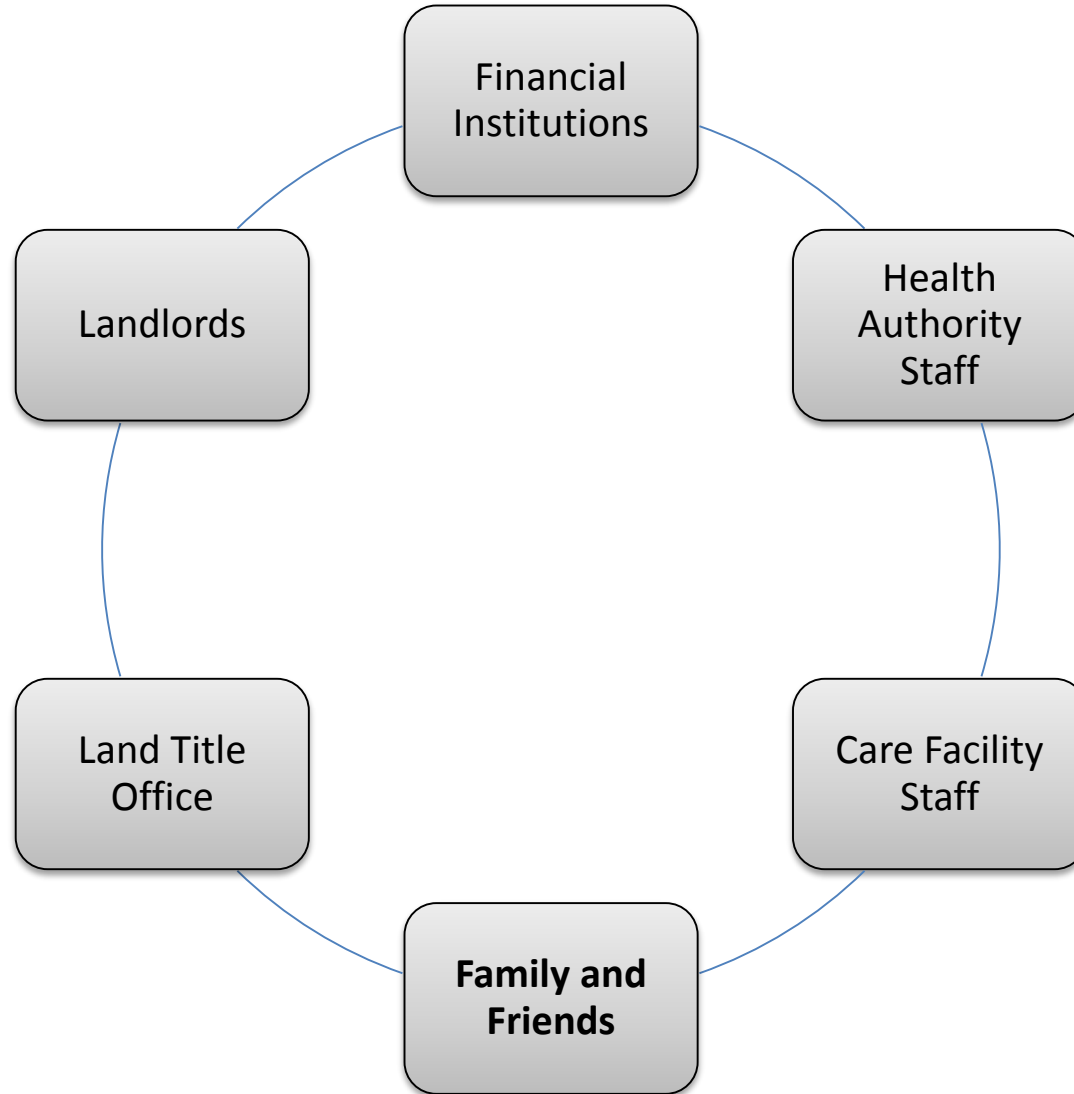
Criteria for Financial Investigation



Protection of Assets in Urgent Cases



Who do we talk to?



Possible Outcomes of Investigation

- Informal solutions/supports put in place
- Representative/Attorney agrees to abide by duties
 - Misuse/alleged abuse was “innocent”
- Refer to Designated Agency for support and assistance to deal with other forms of abuse, neglect and self neglect
- Recommend PGT becomes committee of estate
 - No one in adult’s life is able, willing or appropriate

- Adult is vulnerable but capable
- Adult not able to take steps to stop abuse
 - Respect complexity of family relationships and dependencies
- Gathering information from third parties quickly
 - Functional assessments
 - Banking information
- PGT is limited to financial management and decision making
 - Refer to service partners

- **There are different types and different tests of capability, for example:**
 - To vote (substitution not possible in BC)
 - To drive (MD to assess)
 - To marry (very low test)
 - To make a will (testamentary)
 - To grant a Power of Attorney (test in *POAA*)
 - To be able to contract, Rep 7 vs. Rep 9 agreements
 - To manage financial and legal affairs (*PPA*)
 - To refuse service under a Support and Assistance plan (*AGA*)
 - To make health care decisions (*HCC...A*)
 - To make health and personal care decisions (*PPA*)

- Serve approximately 2000 adult clients
 - Family members and friends become Committee of Estate and Person through a Court Order
 - Approximately 5% of Private Committees are trust companies
- Private Committees of Estate are required to report to the PGT one year from the date of their appointment then subsequently at times determined by the PGT
- Private Committees of Estate must:
 - Maintain appropriate records
 - Access resources and benefits to meet the adult's needs
 - Manage the adult's income and assets for the adult's benefit

Snapshot: Client Services

- PGT serves approximately 3200 adult clients
 - Committee of Estate (majority)
 - Majority by Certificate of Incapability (not Court Order)
- Total value of assets under administration: \$529 million
 - Fees set by regulation (5% of annual income; 5% of the gross value of the estate; asset management fee of 0.4 of 1% per year)
- Client Characteristics:
 - Majority are older adults
 - Also serve adults with mental illnesses, brain injuries and developmental disabilities

When the PGT is Committee

- As Committee of Estate, it is the PGT's duty to protect an incapable adult's property and manage their assets
 - Secure and inventory assets, apply for benefits, develop budgets and debt repayment schemes, pay bills, prepare taxes, and ensure property management and investment planning where appropriate. Pursue legal interests (WVA, MVA, etc).
- The PGT supports and promotes an adult's independence
- The PGT involves the adult and their family in all major financial and legal decisions

Ombudsperson's Report and Changes to *Adult Guardianship Act (AGA)*



- Ombudsperson's Report, "No Longer Your Decision," includes recommendations to bring in Part 2.1 of AGA: [December 1, 2014](#)
- Focus on the Certificate of Incapability process which appoints the PGT as Committee of Estate
 - Autonomy of the adult
 - Respect for adult's rights
 - Enhanced notifications throughout the process (Health Authorities and PGT)
 - Improved standards and training for incapability assessments

Snapshot: Health Care Decisions

- Receive approximately 400 requests per year
 - authorize temporary substitute decision makers
 - make major and minor health care decisions
- Consult on complex risk situations involving abuse, neglect and self neglect



- Health care provider obtains consent
- To be legally valid, consent must be informed
- Way of communicating not, by itself, grounds for deciding adult is incapable
- Up to health care provider to decide whether adult is capable of making health care decision

Temporary Substitute Decision Maker (TSDM)



- If no Committee, Representative or qualified TSDM is available, the PGT can:
 - Authorize someone else to make a health care decision, or
 - Make the decision
- PGT may get involved when dispute among equally ranked qualified family members

Responsibilities of a TSDM

- TSDM duties:
 - Consult with the adult and near relatives/friends
 - Follow pre-expressed capable wishes and if not known, the adult's best interests
- A TSDM may consent to health care decisions only
 - Eg: major surgery, diagnostic procedures, annual plan of care, dental treatment
- A TSDM does not have the authority to make these decisions:
 - Eg: admission to care facility, who can visit, restraints, DNRs

Temporary Substitute Decision Makers

- Spouse
- Child
- Parent
- Sibling
- Grandparent
- Grandchild
- Anyone related by birth or adoption
- Close friend
- Person immediately related by marriage



Predicting a person's preferences...

What does
TDSM want

What would
the adult want

... decisions are never purely based on medical facts...



Involvement of Family (SDMs) in Decision Making

“In recent years, there have been studies that showed that family members experience an extreme amount of distress when they have to make decisions for their family members...”

"It's important to have conversations with older adults about the kinds of treatment they would want if they're unable to make decisions for themselves."

“Doctors should make sure family members are present when they update patients on their medical status, or they could send families updates over the phone.”

"Given the important role that family members play, they should be regarded as an integral part of the medical team."

Thank You!



Any questions?

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Please see www.trustee.bc.ca

- Reports and Publications → Adult Guardianship → “It’s Your Choice” and “How You Can Help”