



Understanding Guardianship

Office of the Public Guardian and Trustee (OPGT)

The *Adult Guardianship and Trusteeship Act* (AGTA) provides options for people who need assistance in making decisions or cannot make their own decisions.

Guiding principles

The *Adult Guardianship and Trusteeship Act* is built on four guiding principles:

1. The adult is presumed to have capacity and able to make decisions until the contrary is determined.
2. The ability to communicate verbally is not a determination of capacity; the adult is entitled to communicate by any means that enables them to be understood.
3. Focus on the autonomy of the adult with a least intrusive and least restrictive approach that is likely to be effective.
4. Decision-making that focuses on the best interests of the adult, based on known wishes, values and beliefs of the adult while the adult had capacity.

What is adult guardianship?

Adult guardianship is when a court order is granted which gives the guardian the legal authority and responsibility to make personal, non-financial decisions on behalf of another adult who has lost capacity.

“Represented adult” is the term used to describe someone who is the subject of a guardianship order and is sometimes simply referred to as ‘the adult’.

Capacity

Capacity is assessed to determine if an adult is able to make personal decisions and understand the consequences. An assessment would only be completed if there are legitimate reasons to believe the adult does not have the ability to make their own decisions.

Capacity may be assessed by a doctor, psychologist or designated capacity assessor. The assessor must confirm that a medical evaluation has been completed to confirm that the decision-making ability of the adult is not being affected by a medical condition that is temporary or reversible.

A [Capacity Assessment Report - Form 4](#) must be submitted to the court as part of the application package.

The court will consider whether the adult’s lack of capacity to make decisions about personal matters is likely to expose that adult to harm. The court would also consider whether the benefits of appointing a guardian would outweigh any adverse consequences to the adult when considering if a guardian should be appointed.

Additional information about capacity assessments and who can complete a capacity assessment for guardianship can be found at: www.alberta.ca/supports-capacity-assessment.aspx

Factors when considering guardianship

A guardianship application may be unnecessary if there is a valid personal directive that can be enacted. An individual considering guardianship should make reasonable effort to determine if the proposed represented adult has a personal directive and what it says.

When thinking about applying for a guardianship order, consider the questions:

- Has a doctor, psychologist or designated capacity assessor determined that the adult lacks capacity?

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- Has a less intrusive or less restrictive decision-making option been considered?

For information on other decision-making options, please visit the OPGT website at: www.alberta.ca/making-personal-decisions-for-incapable-adults.aspx

Applying for Guardianship

Any interested person can apply to be appointed as someone's guardian.

Guardians are appointed by a court order granted by the Court of King's Bench of Alberta.

The *Adult Guardianship and Trusteeship Act* and Regulations set out the necessary legal process for applying for a guardianship order.

An application may be submitted up to 12 months prior to a minor's 18th birthday. If approved, the guardianship order would go into effect when the minor turns 18.

Legislated forms to apply for guardianship can be found on the OPGT website: www.alberta.ca/adult-guardianship.aspx

Eligibility to be a guardian

The court may appoint a guardian if the person:

- Is 18 years of age or over
- Has signed a consent to act

Signing a consent to act as a guardian means the proposed guardian agrees to:

- Act in the best interest of the adult
- Encourage the adult to be as independent as possible
- Act in the least intrusive and least restrictive way possible
- Act diligently and in good faith

The court must also be satisfied that the proposed guardian:

- Has a relationship with the adult
- Is familiar with the adult's wishes, values and beliefs
- Does not have personal interests which may conflict with the adult's interests
- Is able to effectively exercise authority about personal matters referred to in the order
- Is suitable to act as guardian and has completed a background check following OPGT's process

There is no requirement under the *Adult Guardianship and Trusteeship Act* for the guardian to live in Alberta or Canada.

Responsibilities of a guardian

A guardian is legally authorized to make decisions for the adult, monitor the services received, advocate for services needed and ensure that the adult's rights are protected.

A guardian has a duty to exercise his or her authority with consideration of the adult's previously expressed wishes, values and beliefs. If a guardian has been granted authority regarding a matter specified in a personal directive (example: a guardian was appointed because the agent died), the guardian must make decisions according to any clear and relevant instructions in the personal directive.

The guardian should also:

- Inform the adult of decisions that are made
- Keep a record of the decisions that are made

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Confidential information

A guardian has a responsibility to:

- Only access, collect or obtain information that has been authorized and is needed for a decision
- Keep personal information about the adult safe from unauthorized access, use or disclosure according to privacy legislation

Making decisions and providing consent

The guardian has the same authority as the adult if they were capable to make decisions in the areas designated in the order. It is the responsibility of the guardian to decide if consent will be provided, then to communicate the decision in the designated area.

Some possible considerations when making a decision include:

- The explanation provided presents the facts and choices
- The guardian understands the possible outcomes of providing or not providing consent
- Other areas may be affected by the decision
- Availability of additional supports if needed
- The guardian consulted with the adult, to the extent possible
- Consent was voluntary and not coerced

Areas of Authority

The areas in which the guardian has decision-making authority are outlined in the guardianship order. Possible areas of decision-making authority are:

- The adult's health care
- Where, with whom and under what conditions the adult is to live, either permanently or temporarily
- With whom the adult may associate
- The adult's participation in social activities
- The adult's participation in any educational, vocational or other training
- The adult's employment
- The carrying on of any legal proceeding that does not relate primarily to the financial matters of the adult
- Any other personal matters as the court considers necessary

Decisions cannot be made in the following areas:

- Organ donation, unless specifically authorized in the order
- Sterilization, unless medically necessary to protect the health of the adult
- Finances

The adult may have retained decision-making authority in some areas, or another individual may have authority in other areas. A guardian can only act in areas they have been granted authority for in the order.

Consideration should be given to the least intrusive and least restrictive decision that effectively addresses any risks.

Health care decisions

As defined in the *Adult Guardianship and Trusteeship Act*, health care includes:

- Any examination, diagnosis, procedure or treatment undertaken to prevent or manage any disease, illness, ailment or health condition
- Any procedure undertaken for the purpose of an examination or diagnosis
- Any medical, surgical, obstetrical, or dental treatment
- Anything done that is ancillary to any examination, diagnosis, procedure, or treatment
- Any procedure undertaken to prevent pregnancy, except sterilization, that is not medically necessary
- Palliative care
- A treatment plan

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Accommodation decisions

Decisions about where to live require the guardian to consider what may be in the adult's best interest and may include the following considerations:

- Level of care required
- Permanent vs temporary (including holidays)
- Different residential organizations or options to meet the adult's needs

Decisions about with whom to associate

Family, personal relationships and social connection are important. A guardian may need to consider the following to reduce the risk of harm to the adult:

- Safe environment
- Allowing or restricting contact with individuals or groups because of a justifiable reason
- Social media, internet, and phone use

Decisions about social activities

A guardian may need to consent to social activities, recreational events, day trips and travel activities. A guardian must also consider:

- The adult's interests and abilities, and any safety concerns
- The implications or cross over with other areas of decision-making

Education, vocational or training decisions

Determination of what the adult will do with their life requires information about the adult's interest and training needs. The guardian may want to consider:

- New skills that can be targeted or existing skills that can be maintained
- The adult's interests, which may include observations from community supports
- Time frame (beginning and end date)
- The decision may lead to another decision such as future training, employment or other community involvement

Employment decisions

A guardian should have knowledge about the adult's interests, skills, abilities, supports required and future goals when making decisions about the adult's work life. Employment decisions may include:

- Employment preparation programs
- Employment placement
- Support resources

Decisions on legal proceedings

Legal proceedings include any proceeding that does not relate primarily to the financial matters of the adult. The guardian can:

- Help the adult contact appropriate legal services
- Support the legal service provider
- Monitor legal procedures on behalf of the adult

Other legislation may have an impact on the involvement of the guardian.

Resources in Alberta for advice and referrals:

- Dial-a-Law 1-800-332-1091 www.clg.ab.ca

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Accountability

Keeping records allows guardians to track the decisions that have been made over time, ensuring treatment is consistent and the best interests of the represented adult are the priority. To ensure accountability, the guardian should:

- Understand that decisions made and the rationale for those decisions can be recorded in the [Guardian's Record of Decisions](#) form, which may be required with a guardianship review application.
- Record instances in which the represented adult disagreed with the decision and the rationale for proceeding with the decision despite the represented adult's disagreement with it.
- Note any relevant discussions that have occurred with the represented adult so any changes in the values, beliefs or wishes of the adult are recorded and up to date.

Anyone, including the represented adult, may apply to the court to review guardianship at any time.

Personal liability

The guardian cannot be held liable for decisions made in good faith. Section 42 of the AGTA states: "No action lies against a guardian for anything done or omitted to be done in good faith while exercising the authority or carrying out the duties and responsibilities of the guardian in accordance with this Act".

How to apply for a guardianship order

There are two ways to apply for guardianship: by desk or by hearing.

The applicant may prepare court documents on their own, with the assistance of a fee-for-service provider or have them completed by a lawyer. The forms and process for both types of applications are on the OPGT website: www.alberta.ca/adult-guardianship.aspx

For both a desk and hearing application, an OPGT review officer will talk with the adult to explain what the application is about, gather the adult's views on the application and the proposed guardian, and ensure the adult knows they have the right to attend a hearing to express their opinion. There may be exceptions to this process to ensure the best interests of the adult.

Desk application

The applicant may submit an application to the Office of the Public Guardian and Trustee. OPGT will serve or send notice of the application to those required under the legislation and file the application documents with the court. With a desk application no hearing is held unless the adult or an interested person submits a [Request for Hearing](#) or if the judge directs it.

Hearing application

The applicant may submit an application directly to the court. It is the applicant's responsibility to set a hearing date, serve those required under the legislation, complete and file an affidavit of service and attend the hearing. If an interested person opposes the application, they may state their objections at the hearing.

Urgent situation

An applicant may apply directly to the court for an [urgent guardianship order](#) if there is an immediate danger of death of the adult or serious physical or mental harm to the adult and it is necessary for someone to make a decision to prevent or reduce these risks. You may want to contact a lawyer to assist with this process.

Multiple and alternate guardians

Multiple guardians

The applicant may request that more than one guardian be appointed on behalf of a represented adult in one of the following ways:

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- Each guardian has exclusive authority to act only in specific, different areas of decision-making authority. Example: guardian 1 has authority in the areas of healthcare and where, with whom and under what conditions the adult is to live, while guardian 2 has authority in the area of legal proceedings that do not relate primarily to the financial matters of the adult.
- The guardians act jointly in any one or more areas of decision-making authority. Guardians must agree and act together when making decisions. Example: guardian 1 and 2 both have authority in the same areas. Both guardians must agree and sign consents when making decisions.
- The guardians act separately in any one or more areas of decision-making authority – the consent or decision of only one guardian is needed. Example: Guardian 1 and 2 both have authority in the same areas. Either guardian 1 or guardian 2 can make the decision and sign a consent.

If none of the options listed above are specified in the court order, the guardians act separately, meaning the consent or decision of only one guardian is needed.

The court will review the application and decide to grant decision-making authority:

- As the applicant has requested
- In a manner the court thinks is more appropriate

Alternate guardians

An alternate guardian can act as guardian without requiring a new court order only in the following instances:

- The death of the guardian.
- The appointment of a guardian or trustee for the guardian.
- The guardian, due to a lack of capacity, has their personal directive or enduring power of attorney come into effect.
- If authorized in writing by the guardian. This authorization must include the dates for which the alternate guardian will act. This authorization will terminate on the date set out in the authorization.

If an alternate is not appointed, the Public Guardian becomes the guardian in the event the guardian loses capacity or on the guardian's death.

Guardianship reviews

The purpose of a guardianship review is to ensure the guardian(s) are accountable to the court and to the represented adult for decisions made.

A guardianship review must happen when:

- It is required by the court order
- There is a change in the capacity of the adult
- There is a change in the capacity of the guardian that affects the guardian's ability or suitability to make decisions

In addition to the review requirements listed above, a review of guardianship application may be submitted at any time by the guardian or an interested party, depending on the circumstances.

There are a number of documents needed for a guardianship review. Please review the information on the OPGT [website](#) or contact a lawyer to confirm what documents are required.

What happens if a guardianship review is missed?

It is the guardian's responsibility to ensure the order is current.

If the deadline is missed, the guardian continues to act but it is required by law to complete this review.

AGTA application costs

There are costs for different parts of this process:

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- Legal fees – if you hire a lawyer to complete the application
- Capacity assessment – charged by the capacity assessor for the completion of the assessment
- Court filing fees – up to \$250 for the court to process the application
- Background check fee – for the background check to be completed so the summary of the results can be provided to the court with the application

The costs associated with an AGTA court application can sometimes pose a hardship for the applicant and the adult. There are provisions for the court to assign some of the costs to the crown (Government of Alberta). The *Hardship Application for Costs Against the Crown* form with supporting documentation must be completed in order to determine eligibility. A hardship application will be sent to the applicant for completion if financial hardship has been indicated on the AGTA application.

Understanding the order

Review the court order carefully to learn:

- Who has been appointed
- What authority has been granted
- When the order needs to be reviewed
- Any other provisions identified by the court that are specific to the adult

These details are important to understand what the court has decided for both an initial order and a review order.

The Public Guardian

When there is no other individual who is willing, able, and suitable to act as guardian for the adult, an interested party may submit a [referral](#) to an OPGT office as a last resort. If the Public Guardian applies for guardianship, the court may appoint the Public Guardian as guardian for the adult. The Public Guardian is subject to the same duties and responsibilities of a private guardian and is required to act in the adult's best interests, considering the wishes, values, and beliefs of the represented adult.

Protective measures

There are procedures in place to safeguard the well-being of represented adults under the AGTA. Any interested person may send a written and signed complaint to the complaints officer. A [complaint form](#) is available for this purpose.

The complaint must meet the following criteria:

- The guardian is not following the court order; or
- Is not complying with their duties; and
- As a result is likely to harm the represented adult physically or mentally through their action or inaction.

A complaint is evaluated by the complaints officer to determine whether the complaint meets the criteria for an investigation.

If the complaint meets the investigation criteria, it is referred to an investigator.

Additional information about complaints and investigations can be found on OPGT's website at www.alberta.ca/complaints-about-decision-makers.aspx

Where Can I Get More Information?

Website:

Information about the OPGT <https://www.alberta.ca/opgt-supports.aspx>

Adult Guardianship www.alberta.ca/adult-guardianship.aspx

Adult Guardianship Review <https://www.alberta.ca/adult-guardianship-review.aspx>

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Legislation:

Adult Guardianship and Trusteeship Act: open.alberta.ca/publications/a04p2

Adult Guardianship and Trusteeship Regulation: open.alberta.ca/publications/2009_219

Adult Guardianship and Trusteeship (Ministerial) Regulation: open.alberta.ca/publications/2009_224

Offices:

Monday to Friday, 8:15 a.m. to 4:30 p.m.

Grande Prairie 780-833-4319

St. Paul 780-645-6278

Edmonton 780-427-0017

Red Deer 403-340-5165

Calgary 403-297-3364

Lethbridge 403-381-5648

Medicine Hat 403-529-3744