

# Understanding Co-decision-making

ADULT GUARDIANSHIP AND TRUSTEESHIP ACT



The *Adult Guardianship and Trusteeship Act (AGTA)* was created to provide decision-making options for people who need assistance in making decisions or who cannot make their own decisions in their best interest. This legislation provides more decision-making options to Albertans.

Decision-making options for individuals who need assistance are on a continuum, ranging from supported decision-making authorizations to full guardianship.

A co-decision-maker is appointed by the Court to help an adult make decisions in some or all areas of personal decision-making, except financial matters.

For information on other decision-making options, please visit our website at:

**[www.seniors.alberta.ca/opg](http://www.seniors.alberta.ca/opg)**

## The Adult Guardianship and Trusteeship Act

The *Adult Guardianship and Trusteeship Act* sets out the necessary legal process for granting powers of substitute decision-making to a co-decision maker.

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

1. The adult is presumed to have capacity and be 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 less intrusive and less restrictive approach to decision-making; and
4. Decision-making that focuses on the best interests of the adult and how the adult would have made the decision, if capable.

## What is Co-decision-making?

A co-decision making application happens when someone is concerned about an adult's ability to make decisions and thinks that the adult might need help to make some personal decisions. This option works well when there is a close trusting relationship between the adult and the proposed co-decision-maker.

The adult must agree to the co-decision-making arrangement and to the person who is appointed as their co-decision-maker. While the adult and the co-decision-maker work through decisions together, the adult always has the final say.

The decision to apply for a co-decision-making order should be made carefully and thoughtfully. Families may wish to discuss the following with the adult when trying to decide who would be the most appropriate person to apply as a co-decision-maker:

- Who is able and willing to maintain regular contact with the adult?
- Who lives closest to the adult?
- Who does the adult trust?

- Who has a close relationship with the adult?
- Who is able to help the adult make informed decisions based on the adult's values, beliefs, and best interests?
- Who will the adult work cooperatively with?

When determining whether it would be in the adult's best interests to appoint a co-decision-maker, the Court will consider if the adult's ability to make personal decisions is significantly impaired. The Court will also consider if the adult could make decisions with proper guidance and support.

The adult may terminate the co-decision-making arrangement at any time by filing a notice of termination with a Clerk of Court. The co-decision-maker can also terminate the order if they are no longer able to act.

### Who can apply to be a Co-decision-maker?

The Court may appoint an individual as the adult's co-decision-maker if he/she:

- is 18 years of age or over;
- consents to being a co-decision-maker;
- will act in the adult's best interest;
- will respect the adult's wishes, values, and beliefs;
- has a close and trusting relationship with the adult; and
- will help the adult communicate and carry out decisions, when necessary or appropriate.

The Court cannot appoint the Public Guardian or the Public Trustee as a co-decision-maker.

## Who is an Assisted Adult?

An assisted adult is an adult who has agreed to a co-decision-making arrangement that has been approved by the Court. The assisted adult may need support and guidance to make some personal decisions because of a loss of capacity.

For example, the adult could require help making decisions as a result of an acquired brain injury or mild dementia. The adult may have tried a less intrusive decision-making option, such as a supported decision-making authorization, but found that he or she still require more help.

Applications for co-decision-making may be submitted up to 12 months prior to an adult reaching the age of 18. If approved by the Court, the co-decision-making order would go into effect on their 18<sup>th</sup> birthday.

## Factors when Considering Co-decision-making

It may be helpful to consider the following points when discussing whether a co-decision-making application is necessary:

- Does the adult have a personal directive? If so, does the personal directive meet the adult's current decision making needs?
- Does the adult have trouble understanding information or communicating decisions?
- Does the adult struggle to manage his or her personal affairs?
- Would the adult be able to understand information and communicate decisions with proper guidance and support?

- Would a less intrusive option, such as supported decision-making, meet the adult's needs?
- If a co-decision-maker is not appointed, is the adult at risk of being taken advantage of?

## Duties and Responsibilities of a Co-decision-maker

A co-decision-maker is legally authorized and required to help the adult make and communicate decisions. When the co-decision-maker and the adult work through decisions together, the co-decision-maker must:

- act diligently;
- act in good faith; and
- help the adult make decisions in the adult's best interests.

A co-decision-maker is required to help the assisted adult make decisions that are best for the adult. The goal of co-decision-making is the adult and their co-decision-maker work through decisions together. This can be rewarding and, at times, challenging. There may be conflict with the assisted adult or other family members. Co-decision-makers need to be aware of the potential for conflict and ensure they are helping the adult make decisions in the adult's best interests.

A co-decision-maker's areas of decision-making authority are based on the needs of the assisted adult. As each adult's needs and ability differ, so do the areas of decision-making authority of each co-decision-maker. Depending on the areas of authority granted, the co-decision-maker could help the adult make decisions about health care, where to

live, education, social activities, employment, legal proceedings, or other personal matters.

A co-decision-maker must help the assisted adult find and understand any information that could help the adult make informed decisions. The co-decision-maker has the authority to do all things necessary to carry out the decisions the adult makes with the co-decision-maker.

Where the Court has ordered that a co-decision-maker and adult must sign contracts about personal matters together, such as Release of Information waivers, the co-decision-maker cannot refuse to sign anything that is not likely to harm the adult. Co-decision-makers cannot make decisions about anything related to financial matters.

## Making decisions

A co-decision-maker is expected to recognize and respect an adult's dignity and best interests, promote the adult's autonomy, and help the adult make informed choices.

Remember that when a co-decision-maker is helping an adult make decisions, the co-decision-maker must take the time to gather the necessary information, help the adult understand the information, and carefully discuss all options with the adult. Co-decision-makers should ask as many questions as needed to help the adult make an informed decision. Keep in mind, just as with any decision, the decision may change over time or with new information.

Decisions should always be made with serious consideration of the situation and any alternatives available. The assisted adult and the co-decision-maker make decisions together.

## Accountability

A co-decision-maker is accountable to the Court for decisions made with the assisted adult. Court reviews are one of the methods exercised to ensure accountability. Anyone, including the assisted adult, may ask the Court to review the co-decision-making order at any time.

## How to Apply for a Co-decision-making Order:

There are four main parts of a co-decision-making application:

1. A Capacity Assessment Report (CAR) must be completed by a capacity assessor and is used to determine the mental capacity of the proposed assisted adult. This report is given to the Court to help determine whether co-decision-making is the best option. The Court must have as much information as possible in order to determine if co-decision-making is in the adult's best interest and will result in substantial benefit to him or her.
2. Complete all required court forms using either a Self Help Kit or a lawyer.
  - **Self Help Kit:** This kit has all necessary forms and instructions. These forms are designed for use by people who wish to make a co-decision-making application without hiring a lawyer. Self Help Kits are available online [www.seniors.alberta.ca/opg](http://www.seniors.alberta.ca/opg) or from the Office of the Public Guardian toll-free at 1-877-427-4525. You can receive help to complete the kit from an Agency to Assist Personal Decision Makers. Please contact the Office of the Public Guardian for the agency nearest to you.
  - **Lawyer:** The alternative is to hire a lawyer to prepare the application on your behalf. If you do not have a lawyer and would like to contact one, the Lawyer Referral Service operated by the Law Society of Alberta can provide you with the names of several lawyers in your community who are interested in this area of practice. You can contact the Lawyer Referral Service by calling 1-800-661-1095.
3. Once the Office of the Public Guardian has received the application package, a Review Officer will visit the adult to explain what the application is about, gather the adult's views on the application and the proposed co-decision-maker, and ensure the adult knows they have the right to request a hearing.
4. Based on the information the Review Officer gathered in the application and through the meeting with the adult, the Review Officer will write a report which will accompany the application to Court. The report will also contain information about the suitability of the applicant.

Once the Capacity Assessment Report and all the required Court forms are completed, submit the application package along with two personal references and consent to a criminal record check to the Office of the Public Guardian. A Review Officer will review the application to make sure all necessary information is included. Applicants may also submit their application directly to the Court and request a hearing. This is called an *application by hearing*.

3. Once the Office of the Public Guardian has received the application package, a Review Officer will visit the adult to explain what the application is about, gather the adult's views on the application and the proposed co-decision-maker, and ensure the adult knows they have the right to request a hearing.
4. Based on the information the Review Officer gathered in the application and through the meeting with the adult, the Review Officer will write a report which will accompany the application to Court. The report will also contain information about the suitability of the applicant.

The Judge will consider all the information presented and decide whether the adult needs a co-decision-making order. Applications for co-decision-making require that proposed co-decision-makers have criminal record and

reference checks. This is to ensure that there are appropriate safeguards in place to protect the proposed assisted adult.

The Capacity Assessment Report will help identify what areas of authority (outlined below) are required in the co-decision-making order. The application should only request authority in the areas there is a clearly demonstrated need for decision-making assistance. For example, it is unlikely that an adult in their eighties will need the areas of employment or education and training.

The AGTA allows the Court to specify any of the following personal matters as areas in which the co-decision-maker has decision-making authority:

- 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 education, vocational, or other training;
- the adult's employment;
- the carrying on of any legal proceeding that does not relate primarily to financial matters; and
- any other personal matters the Court considers necessary.

## **If more than one Co-decision-maker is Applying**

If there is more than one applicant to be a co-decision-maker, the Judge will decide who the most appropriate person to be the co-decision-maker is. The Court may appoint one or more co-decision-makers for the adult. If the Court appoints more than one co-decision-maker, the Court must specify whether the co-decision-makers are to act together, one after the other, or separately.

## **Application Support**

The Office of the Public Guardian can provide you with information and resources to help you complete your application. Please visit [www.seniors.alberta.ca/opg](http://www.seniors.alberta.ca/opg) for more information.

The Office of the Public Guardian also funds agencies in several Alberta communities to provide information and assistance about co-decision-making. The agencies can be sources of valuable advice and support for families seeking co-decision-making or carrying out their co-decision-making responsibilities. Please contact the Office of the Public Guardian at 1-877-427-4525 for the agency nearest to you.

## **Application Costs**

The cost of obtaining a co-decision-making order varies depending on the choices you make.

If you prepare the application forms yourself, you may incur direct costs for obtaining a capacity assessment, photocopying, and the Court filing fee.

If you choose to retain a lawyer to prepare the application, your costs will increase accordingly. It is important that you discuss costs with your lawyer before you proceed.

The costs associated with co-decision-making can sometimes pose a hardship for individuals and families. Should this be the case, there are ways for the Court to assign some of the costs to the Government of Alberta.

## Co-decision-making Reviews

During a Court review of a co-decision-making application, the Court assesses the assisted adult's needs as well as the decisions the co-decision-maker and adult have made together. The Judge will also review the Capacity Assessment Report, completed less than six months before the review, to determine if a co-decision-making arrangement still meets the adult's needs.

### Reviews Costs

Reviews are subject to the same costs as obtaining a co-decision-making order, with the exception of the Court filing fee.

## For More Information

The Office of the Public Guardian has developed other information to assist co-decision-makers in their roles. Please call the Office of the Public Guardian toll-free between 8:15 a.m. and 4:30 p.m., Monday to Friday: **1-877-427-4525** or visit [www.seniors.alberta.ca/opg](http://www.seniors.alberta.ca/opg)

### Offices

The Office of the Public Guardian has offices across the province. They are open Monday to Friday from 8:15 a.m. to 4:30 p.m. To be connected toll-free, call 310-0000. To find an

Agency in your area to assist you in completing your Co-decision-making Self Help Kit, please call your nearest regional office.

#### Northwest Region

Grande Prairie: 780-833-4319

#### Northeast Region

St. Paul: 780-645-6278

#### Edmonton Region

Edmonton: 780-427-0017

#### Central Region

Red Deer: 403-340-5165

#### Calgary Region

Calgary: 403-297-3364

#### South Region

Lethbridge: 403-381-5648

Medicine Hat: 403-528-5245

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