

Capacity Assessment

Adult Guardianship and Trusteeship Act (AGTA)

What is the AGTA?

The AGTA is legislation that offers a variety of options to support adult Albertans who need assistance making personal or financial decisions, or both.

These options allow adults to receive decision-making assistance according to their needs and to maintain their independence for as long as possible.

AGTA Guiding Principles

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

- The adult is presumed to have capacity to make decisions until the contrary is determined.
- The ability to communicate verbally is not a determination of capacity; the adult is entitled to communicate by any means that enable them to be understood.
- Focus on the autonomy of the adult with a least intrusive and least restrictive approach that is likely to be effective.
- 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 capacity?

The legal definition of capacity under the AGTA is: the ability to understand information relevant to a decision and to appreciate the reasonably foreseeable consequence of (i) making a decision or (ii) the failure to make a decision.

Disagreeing with a decision does not make someone incapable. For example, someone could decide not to take medication recommended by their doctor. If they understand why the medication is important and what will happen if they do not take it, they are probably capable of making the decision.

It is also possible to have capacity in one area and not another. For example, someone might struggle to understand complex health care decisions, but still be capable of making decisions about their social activities and finances.

Why is capacity assessed?

Capacity is assessed to provide the Court with information to help determine whether or not a co-decision maker, guardian, or trustee should be appointed for an adult.

There must be legitimate reasons for a capacity assessment.

Who is authorized to conduct capacity assessments?

Physicians and psychologists are designated as capacity assessors. Other professionals who have completed special training may also be designated as capacity assessors.

What happens when capacity is assessed?

The capacity assessor will ask about the adult's situation, why there are concerns about the adult's ability to make decisions, and the specific types of decisions in question. The assessor will also want to confirm that a physician has examined the adult to ensure that a reversible or temporary medical condition is not affecting the adult's ability to make decisions.

If an assessment is needed, the assessor will meet with the adult to explain the assessment process including what will happen if the adult is found to lack capacity. The adult can have someone present (ex: family or legal counsel) to help the adult feel comfortable and can have a person or device to help communicate during the assessment.

The assessor will focus on the types of decisions that need to be assessed. For example, there may be concern about the adult's ability to make health care and residential decisions, but no concern about capacity for other personal or financial decisions. The assessor will evaluate the adult's understanding of specific decisions (ex: medical condition) and the consequences of making or not making a decision (ex: risks and benefits of having surgery or not having surgery).

At the conclusion of the assessment, the assessor documents the findings regarding the adult's capacity in the specific areas assessed. The assessor also identifies whether or not the adult is likely to regain capacity. If the

assessor believes the adult may regain capacity, a date when capacity should be reassessed will be recommended.

Who gets a copy of the Capacity Assessment Report?

The person applying to become a co-decision maker, guardian, or trustee will receive the Capacity Assessment Report from the assessor. The report is then included with all the information given to the Court to help determine if a decision-maker should be appointed for the adult. The adult is also provided with the same information that is given to the court unless, in rare circumstances, it is believed that providing the information will only harm the adult. The adult can request a Court hearing about the application.

How do I find a capacity assessor in my community?

The adult's physician may conduct, or should be involved in, the capacity assessment. Physician involvement is important to ensure any reversible or temporary medical conditions are not affecting the adult's ability to make decisions. If the physician is not able to complete the entire assessment, another designated capacity assessor can complete the process.

A list of designated capacity assessors is available at: [Find a capacity assessor | Alberta.ca](#)

When can an adult ask for a re-assessment of capacity?

Under the AGTA, the capacity assessor may provide an opinion on when it should be re-assessed.

A represented adult can ask for a re-assessment of capacity at any time.

Where can I get more information?

Visit our website:

Information about Office of the Public Guardian and Trustee
www.alberta.ca/opgt-supports.aspx

Capacity Assessment
www.alberta.ca/supports-capacity-assessment.aspx

Office locations:

The Office of the Public Guardian and Trustee has locations across the province. Offices are open Monday to Friday between 8:15 a.m. and 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