

Adult Guardianship / Committeeship in BC By Court Order (Private) or By Statute (Public)

Traditionally, emphasis has been on making arrangements for **after death**. But with the aging of the population, there is more focus on what happens when someone is alive but has cognitive difficulties?

People think of making a Will to plan for after death. Less familiar are the legal documents available to adults in case of incapacity. Some use the term 'incapacity planning' or 'advance care planning;' Nidus uses the term **personal planning** to describe the concept.

No one has automatic legal authority to act on behalf of an adult — not a spouse or relatives. Adults have to be pro-active by making legal personal planning documents. If not, then authority is imposed on the adult.

Adult Guardianship/Committeeship is intrusive and the most extreme type of imposed authority. It removes the adult's decision making rights and gives these to someone else based on a finding that the adult is 'incompetent.' (The rights removed are not just for specific things, it can be all-encompassing.) For the adult, this is sometimes called civil death and becoming a non-person under the law.

Adult Guardianship is a common term used nationally and internationally. British Columbia has used the term Committeeship (pronounced kaw-mi-TAY-ship) instead.

The laws governing adult guardianship are not universal. In BC, Adult Guardianship/Committeeship is governed by the Patients Property Act and Adult Guardianship Act.

Adult Guardianship/Committeeship is different from guardianship of minor children. Guardianship of minor children (and parental rights) ends when the minor becomes an adult. In BC, the age of adulthood is 19 years.

Why does guardianship happen to adults?

An adult is vulnerable to guardianship when the adult's mental (cognitive) capability to understand comes into question and no one has legal authority to act for them.

Like other issues (e.g. drinking & driving) beliefs and values about disability rights have evolved. Just because an adult has a cognitive disability (due to a disability at birth or childhood or due to advanced dementia or severe stroke) and the adult may need help with decisions and managing their affairs, it does not mean the adult is totally incompetent or a non-person.

Guardianship can also happen because a legal document the adult made does not cover what is needed or those who have legal authority to act are abusing the adult.

The general public may not be aware that the laws that govern making legal planning documents depend on the a traditional (some would call old) view of capability.

Canada's federal Charter of Rights and Freedoms protects disability rights.

Yet provincial/territorial laws about legal planning documents **discriminate** against people with cognitive or intellectual disabilities. The laws require the maker to 'understand/appreciate the nature and effect/consequences' of the legal planning document. The laws do not recognize that having access to trusted help from personal supporters is an important factor in capability.

BC legislation is more progressive, thanks to a grass-roots law reform, and the development of the Representation Agreement Act and a different definition of capability for Agreements with authorities from section 7 of the Act (RA7).

What legal documents avoid the need for Adult Guardianship/Committeeship in BC?

In BC, the essential legal planning document for an adult is a Representation Agreement. For some, who meet the traditional capability requirements, also making an Enduring Power of Attorney with a lawyer or notary public might be necessary.

The document you can make depends on the requirements (including about capability) in the law for that specific document. The requirements are not the same across all documents or laws.

- Any kind of Adult Guardianship/Committeeship has stigmatizing effects on the adult in question.
- BC community groups and individuals created the RA7 as a legal alternative to guardianship for adults who have cognitive difficulties when making the document.
 - › In BC, before the RA7, if an adult did not 'understand' and something had to be dealt with, then Committeeship was the only route.
 - › The law says adults may make a RA7 even if they do not 'understand' and need help now.

Two types of Adult Guardianship/Committeeship

In BC, there are two approaches or types of Adult Guardianship/Committeeship: 1) Private; and 2) Public.

An important principle in BC (and a legacy of the community-based law reform), is that Adult Guardianship/Committeeship must be the **LAST RESORT**.

The Public Guardian and Trustee of BC has developed policies to reinforce the principle of last resort, as it relates to their role in public guardianship.

What is PRIVATE Adult Guardianship/Committeeship in BC?

Private Adult Guardianship/Committeeship in BC is by **COURT ORDER** and is governed by the Patients Property Act.

Private Committeeship requires hiring a lawyer and filing an application with the Supreme Court of BC.

Usually a spouse or other relative of the adult applies for private Committeeship.

A Credit Union or Trust Company can apply for private Committeeship but only for committee of estate.

- Private committeeship costs around \$10,000.00 or more, takes 3-4 months and is difficult to reverse.
- There are **TWO TYPES of court-ordered appointments** for private Committeeship. They each cover different life areas and authority. The first type is more common. There is no requirement to apply for both types.
 - 1) Committee of Estate** — is a court order that appoints a person to have authority over the adult's financial and legal affairs.
 - 2) Committee of Person** — is a court order for the adult's health and personal care matters.

Comments:

- Applying for committee of estate may be necessary because the adult's real estate has to be sold. The RA7 authority for 'routine finances' does not allow dealing with real estate matters. (When cognitively capable, the adult should have made an Enduring Power of Attorney with a lawyer or notary public - in case.)
- When someone is appointed committee of estate, they must report to the Public Guardian and Trustee (a government official) about how they are managing the adult's finances. The PGT decides how often reporting is done. A fee is charged by the PGT for reviewing the committee's records and accounts.
- The lawyer might say 'why not apply for committee of person' at the same time as committee of estate?

Sometimes people do not want to do this because of the stigmatizing effects on the adult—see the example in the shaded box on page 4.

- A judge has the power to keep a Representation Agreement in effect but this must be requested when procedures begin, not later (see Patients Property Act, section 19(b)). Once the judge makes a court order any Representation Agreement is cancelled. (Any existing type of power of attorney is automatically cancelled if a committee of estate is appointed by the court.)
- **STEPS** for private (court-appointed) Committeeship in BC:
 - › Find a lawyer who is experienced with this type of work as it is somewhat specialized.
 - › The lawyer will get affidavits from two BC physicians saying the adult is mentally incapable of managing their affairs (and/or person).
 - › You will provide information and make an application to be appointed by the judge as the committee.
 - › The adult and certain others must be notified of the application. The lawyer will arrange for this.
 - › The PGT is notified about any court application. They can make comments for the judge to consider. (The PGT may have complaints on file about an applicant.)
 - › Sometimes, there is an application from someone else (or even from the PGT). A judge will consider evidence provided by the lawyers of all parties.
 - › Sometimes an adult will have their own lawyer to argue that the adult is not incapable.
 - › A judge first determines if an adult is incompetent (of managing their finances and/or their person). If yes, the judge must appoint a committee.
 - › Sometimes a judge will put conditions or restrictions in the court order. For example, the judge might require a committee of estate to be bonded.
 - › If there is a lot of conflict among competing applicants, a judge might appoint the PGT as committee.
 - › Committeeship costs are often reimbursed by the adult's estate. The lawyer usually brings this up.

What are the duties of a court-appointed committee?

The Patients Property Act sets out the duties of a committee in section 18. The [PGT has a guide](#).

The role of a committee is to act in the 'best interest' of the adult and the adult's family. Best interest means doing what the committee thinks is best, from the perspective of the committee. (Unlike with the RA7, checking with the adult or following the adult's wishes is not a duty of a committee.)

The law says that, as much as is reasonable, a committee must encourage the adult's independence and involvement in decision making that affects them. While this is a way to 'modernize' or pretty-up guardianship, the fact remains that the committee is ultimately in charge, and their signature on official documents is the only one that matters.

Adult Guardianship/Committeeship is not based on self-determination of the adult.

A court-appointed committee of estate must take an inventory of what the adult owns (assets) and owes (debts) and provide this to the PGT when they first take over the adult's affairs. The PGT will tell the committee of estate how often to submit reports detailing how the committee is managing the adult's financial affairs.

Experiences of private committees

A spouse, family members and friends who act as committee of estate often report frustration with the bureaucratic and onerous reporting requirements. Since reviews are done after the fact and generally take considerable time, these do not provide much of a safeguard, but are time-consuming and can be anxiety-provoking for caregivers.

When does Committeeship end?

Once in place, Adult Guardianship/Committeeship lasts until the **adult dies** or the Committeeship is discharged.

To discharge (remove) a court-appointed committee, the adult will need to hire a lawyer to provide evidence for a judge to find the adult is no longer incompetent and is able to take back their rights to manage their own affairs and make decisions.

If an adult's court-appointed committee dies or becomes incapable or is unwilling to act, and there is no co-committee to carry on, someone else can apply to be appointed. In the meantime, the PGT will act as the adult's committee.

Generally, once a committee is in place, Committeeship remains in place, there is no other route.

Nidus is aware of one case where a judge of the Supreme Court of BC discharged court-appointed committees (parents) of an adult after the judge gave the adult time to make, what Nidus calls, a RA7ALL. Unfortunately, there is no written public record of this.

If only a committee of estate is in place, the adult may make a RA7H+P to cover health care and personal care matters. This can avoid the need for a court-appointed committee of person.

What is PUBLIC Adult Guardianship/Committeeship?

Public Guardianship/Committeeship is also called statutory Guardianship/Committeeship.

- There is no court application; it is done through the health authority.
- Statutory or **public** Guardianship is governed by the Adult Guardianship Act and the Patients Property Act.
- Statutory or Public Guardianship only applies to the PGT.
- The PGT can refuse or accept the role of committee of estate. Due to having to charge fees, the PGT tends to refuse if the adult has limited funds and a low income.
 - › If statutory/public guardianship is underway, the financial authority in a RA7 is suspended and any type of power of attorney is suspended.
 - › If the PGT accepts the role to become the adult's committee of estate then the suspension becomes a termination.
 - › The PGT has discretion to refuse and to allow the financial authority in the RA7 to continue.
- Read more details in [Statutory Property Guardianship — How it Happens, How to End it](#)
- If the PGT accepts the role of being the adult's committee of estate, it is a good idea for someone to help the adult make a Representation Agreement section 7 for health and personal care (RA7H+P) so that the adult has someone to help advocate for using the adult's money to benefit the adult's quality-of-life needs.

REFORMING ADULT GUARDIANSHIP/ COMMITTEESHIP IN BC - the vision

The BC grass-roots coalition that created the Representation Agreement section 7 (RA7) as a legal alternative to adult guardianship also put forward other new legislation to reform Adult Guardianship/Committeeship. Four new inter-related Statutes would bring about significant reforms.

- Public or statutory guardianship, would be eliminated.
- Court-appointed guardianship would be time limited and task specific.

These reforms were not enacted and have since been re-written by government staff.

Change is hard; reform is even more difficult to achieve.

In 2008, the United Nations passed a Convention on the Rights of Persons with Disabilities and called for adult guardianship to be abolished. The UNCRPD was influenced by the Representation Agreement Act of BC, particularly the RA7, which came into effect in 2000.

EXAMPLE: *Simran had a serious stroke that affected her speech and ability to move the right side of her body. It wasn't clear if there was brain damage or if it was permanent.*

A short time after her stroke, Balwant and Kamal helped Simran to make a Representation Agreement under section 7. A RA7ALL covers all four life areas: routine finances, legal affairs, minor and major health care and personal care.

Simran did not have to be labelled 'incompetent' to get help from those named in the RA7ALL. Simran's spouse and daughter did not have to go through the court for guardianship in order to help Simran.

The RA7ALL enabled the representative (Balwant - the spouse) to renew the car insurance, which was in joint names with Simran. He was able to talk to Canada Revenue about Simran's taxes. He was able to consent and advocate for Simran's health and personal care wishes. With the RA7ALL, he was also able to help Simran apply for long term disability through Simran's employment benefit program.

After rehabilitation, Simran needed some support but was able to manage many daily activities. She was not able to return to her job.

For the most part, the RA7ALL was 'left in the drawer' as it did not need to be used as often.

A year or so later, Balwant noticed Simran was having difficulties with her memory and reasoning. The RA7ALL was again helpful to Simran for getting a diagnosis of dementia, consenting to medications, and arranging ongoing assistance and services.

Some years later, Simran is now living in a care facility due to the progression of her dementia and need for more personal care services than her spouse/caregiver, Balwant, could arrange at home.

Balwant is considering selling the house to downsize and to move closer to the facility where Simran lives.

*The house is owned jointly by Simran and Balwant. Simran did not make an Enduring Power of Attorney when she was cognitively capable. The routine financial affairs included in the RA7 All does not cover dealing with real estate.**

**NOTE: Owning the house jointly with Right Of Survivorship means that if Balwant or Simran dies, the other will become the sole owner of the house. Joint ownership does not avoid the need to plan in case of incapability.*

Balwant and Kamal learned a valuable lesson from Simran's situation. They each made an Enduring Power of Attorney and a Representation Agreement section 9 (RA9), BEFORE their capability to understand comes into question.

More resources

The Nidus Resource Centre has lots of free information, stories and videos at nidus.ca

For information and forms:

- Making Changes, Revoking, Resigning, go to [Related Forms](#)
- Making a Representation Agreement, go to [RA Forms](#) Scroll down to RA7ALL, or RA7H+P, RA9 etc. There are two buttons to click/download for each type of Agreement. (Be sure to see page 2 at the first download button.)

See also [PGT website](#)

To view legislation

Go to bclaws.bc.gov.ca > Laws of BC > Public Statutes and Regulations > click on the letter for the legislation:

- A > Adult Guardianship Act (& see Regulation)
- H > Health Care Consent and Care Facility Admission Act (& see Regulation).
- P > Patients Property Act (& see Rules & Regulation)
- R > Representation Agreement Act (& see Regulation)

Keep track and organized — the Nidus Registry service

The online Nidus Registry, operated by the Nidus Resource Centre, is designed for self-management. Registration is voluntary. See [How to Register](#)

The Nidus Registry securely stores important information and can store a copy of a completed document (if uploaded in PDF format). This is especially helpful in case of a health emergency, natural disaster or evacuation.

Find actions you can take at nidusregistry.ca

- [Search](#) for existing registration.
- [Sign Up](#) for self-registrants (public) to create Registry Account, then register.
- [Log In](#) for self-registrant to access registrations.
- [Legal professionals](#) to Log In and register on behalf of clients.

See also [Nidus Registry FAQ](#)