

Adult Guardianship / Committeeship in BC By Court Order or By Legislation

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

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

In BC, Adult Guardianship/Committeeship is governed by the Adult Guardianship Act and the Patients Property Act.

Why does guardianship happen to adults?

An adult is vulnerable to guardianship when the adult's mental capability to understand comes into question and did not give anyone legal authority to act for them. An adult may need help to make decisions and/or to manage their affairs. The adult may have a disability from birth or childhood that affects their understanding. The adult may have advanced dementia or had a severe stroke that now affects their understanding.

Sometimes guardianship happens to adults because the legal document they made does not cover authority for a task that is needed or it fails.

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

In BC, the essential legal planning document for adults is a Representation Agreement and for many, an Enduring Power of Attorney might also be necessary.

The document you make depends on the capability requirements for that specific document. Read about alternatives and examples on pages 3 and 4.

How does Adult Guardianship/Committeeship happen by court order?

Adult guardianship by **COURT ORDER** is also called **private Committeeship** and is governed by the Patients Property Act.

Private Committeeship requires filing an application with the Supreme Court of BC. For details see page 2 *Steps for court-appointed...*

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

A Credit Union or Trust Company can apply for Committeeship but only for committee of estate (for financial and legal authority).

- Committeeship costs about \$5,000 to \$7,000, takes 3-4 months and is difficult to reverse. It also has other effects on the adult in question.
- Community groups and community members in BC created the Representation Agreement section 7 (RA7) as a legal alternative to guardianship for adults.
 - › Before the RA7, if an adult did not 'understand' and something had to be dealt with, then adult guardianship/Committeeship was the only way.
 - › The law says adults may make an RA7 even if they do not 'understand' and even if they need help now to manage their affairs and make decisions.

An important principle in BC (and 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, particularly as it relates to the PGT role as statutory public guardian by legislation.

- There are **TWO TYPES of court-ordered appointments**. They each cover different life areas and authority. The first type is more common. There is no requirement to have both types.
 - 1) Committee of Estate** — is for assuming authority over the adult's financial and legal affairs.
 - › In most cases, the motivation behind applying for Committeeship is because: 1) the adult is on the title of real estate; 2) the real estate needs to be sold; 3) the adult did not make an Enduring Power of Attorney to authorize someone to sell it; and 4) now the adult does not meet the capability requirements to make an Enduring Power of Attorney.
 - › If someone is appointed committee of estate, they will have to report to the Public Guardian and Trustee (PGT) about how they are managing the adult's finances. The PGT decides how often reporting is done and there is a fee to review the committee's records or accounts.

2) Committee of Person — is for assuming authority over the adult's health and personal care matters.

- › If an adult made an Enduring Power of Attorney, there is usually no need for someone to apply to be committee of estate, (because the authority for financial and legal affairs is covered by the Enduring Power of Attorney). Therefore it would be rare to apply only for committee of person due to the cost and less intrusive measures available for health care (see next bullet).
- › A 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 shaded box on page 3. See *More Information from Nidus* on page 4 about health care consent.
- › A judge has the power to keep in effect the health care and personal care authorities in a Representation Agreement, even if someone is applying for committee of estate (see Patients Property Act, section 19(b)).

• **STEPS** for 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 that 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 committee.
- › The adult and certain others must be notified of the application. The lawyer will arrange for this.
- › The Public Guardian and Trustee (government official) is notified about the application. They can make comments for the judge to consider. Perhaps the PGT has complaints on file about an applicant.
- › Sometimes, there is a competing application from someone else (or even the PGT). A judge will consider evidence and information provided by all parties, through their lawyers.
- › Sometimes an adult will have their own lawyer to argue that the adult is not incapable.
- › A judge first declares an adult incompetent (of managing their finances and/or their person) and then appoints an applicant as committee.
- › Sometimes a judge will put conditions or restrictions in the court-order. For example, if someone has applied to sell the adult's real estate, the judge might require the committee 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 or judge will bring this up.

How does Adult Guardianship/Committeeship happen by legislation?

The other way adult guardianship occurs is through **LEGISLATION**.

This is called **Statutory Property Guardianship** because the state—via the Public Guardian and Trustee (PGT)—acts as the guardian of the adult's property (financial and legal affairs).

Statutory guardianship is also called **public guardianship** and is outlined in the Adult Guardianship Act and the Patients Property Act.

- You will find more details on statutory or public guardianship in the Nidus fact sheet [Statutory Property Guardianship — How it Happens, How to End it](#)
- Statutory property guardianship (Adult Guardianship/Committeeship by legislation):
 - › Only applies to the PGT, and
 - › Only gives the PGT authority over the adult's financial and legal affairs.
- If the PGT has authority for the adult's financial and legal affairs, 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 with them and on their behalf for using the adult's money to benefit the adult's quality-of-life needs.

What are the duties of a court-appointed committee?

The Patients Property Act sets out the duties of a committee in section 18.

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.

The committee needs to consider the type and value of the adult's property (financial affairs) and the needs of the adult and their family.

The law also 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.

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. As mentioned, the PGT will tell the committee of estate how often they must submit reports detailing how they are 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 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 mentally incompetent and is able to take back their right to manage their own affairs and 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. The PGT will act as the adult's committee in the meantime or permanently, if necessary.

Although a Representation Agreement section 7 (RA7) is a legal alternative to Adult Guardianship/Committeeship in BC, a representative cannot override the authority of a court-appointed committee or of the PGT if they are the adult's statutory property guardian.

However, if only a committee of estate is in place (with authority for financial and legal affairs) through a court appointment or the PGT by legislation, the adult could make a Representation Agreement section 7 for health and personal care (RA7H+P), which would provide meaningful authority and support for the adult's wishes about quality-of life.

Nidus is aware of a 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, an RA7All.

ALTERNATIVES TO ADULT GUARDIANSHIP/ COMMITTEESHIP IN BC

EXAMPLE: *Simran had a 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 Section 7. An RA7All includes authority for aspects of all 4 life areas. An RA7All covers routine finances, legal affairs, minor and major health care and personal care.

Simran does not have to be labelled 'incapable' to get help from those named in the RA7. Simran's spouse and daughter did not have to go through the court for guardianship in order to help Simran.

The RA7All enabled Balwant 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 RA7, he was also able to help Simran apply for long term disability through Simran's employment benefit program.

After her rehabilitation, Simran needed support but she was able to take back many of her daily activities at home and in the community. 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. She was subsequently diagnosed with dementia. The RA7 was again helpful for getting a diagnosis, consenting to medications, and arranging ongoing assistance and services for Simran.

As an approach, adult guardianship is intrusive, stigmatizing, and often referred to as civil death.

Under guardianship, an adult becomes a non-person.

Accountability is to the court or to the state.

The BC community groups that created the Representation Agreement section 7 (RA7) as a legal alternative to adult guardianship also **envisioned** a new adult guardianship/Committeeship system.

- There would be no more public or statutory guardianship, only court-appointed guardians to ensure due process.

- Court-appointed guardians for adults would have limited authority according to the specific need or task— not plenary (general) authority as with the current system. Authority would also be limited by time — not be permanent or so difficult to end.
- These reforms were not enacted and have since been re-written by government staff.

The United Nations Convention on the Rights of Persons with Disabilities, which was influenced by the earlier and progressive Representation Agreement Act of BC, called for adult guardianship to be abolished.

The BC community groups who worked to reform the system in BC, did not try to eliminate adult guardianship but hoped it would be the **last resort** and its use be very limited.

Adult Guardianship/Committeeship can happen because:

- No legal planning documents are in place.
- Available planning documents are insufficient—do not cover a task that is needed.
- Disputes among family members.
- Concerns of abuse.

EXAMPLE: *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 as it is too large for his needs and he also wants to move closer to the facility and spend time with Simran.

*The house is owned jointly by Simran and Balwant. Simran did not make an Enduring Power of Attorney when she met the capability requirements for making it. The routine financial affairs included in the RA7 All does not cover dealing with real estate.**

Balwant and Kamal learned a valuable lesson when Simran had her stroke. They each made an Enduring Power of Attorney and a Representation Agreement section 9 (RA9), before their capability to understand came into question.

**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.*

More Information from Nidus

For fact sheets and information, go to www.nidus.ca > Information (top menu bar)

> Health Care Consent

- Health Care Consent in BC: Your Rights & the Law
- How Health Care Decisions are Made in BC if You are Incapable of Informed Consent
- Representation Agreements for Health Care in BC

> Representation Agreements

- RA7 Fact Sheet
- RA9 Fact Sheet
- Other resources for Representation Agreements.

> Adult Guardianship

- Statutory Property Guardianship (PGT by legislation)

> Estate Planning

- Joint Ownership: the Good, the Bad, and the Risky
- Wills - tips for making; Dying without a Will.

To view legislation and regulation

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

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

Letting others know about your plans — the Nidus Registry service

The Nidus Registry was established and is supported by the public to enable communication of important information and documents.

BC legislation for health care consent says that a health care provider only has to make reasonable effort to find an existing authority — some believe this should be made a legal duty. This is one of the reasons for developing a Registry service.

Many people use the Nidus Registry to store important information and documents in case of a health crisis and other emergency such as a wildfire, flood, earthquake, or tsunami.

Learn more in FAQ section at <https://nidusregistry.ca/>

Your donation to Nidus can help with ongoing education. Nidus is a charity and can provide a tax receipt. Go to www.nidus.ca > [Donate](#) (top menu bar) for ways to donate.

Thank you to the BC Ministry of Health for a one-time grant in 2020.

p. 4/4