

ADULT GUARDIANSHIP REGULATION

PART 1 – GENERAL PROVISIONS

Definition

1 In this Regulation, “**Act**” means the *Adult Guardianship Act*.

Reporting of substantial changes

1.1 In addition to the changes described in section 19 (5) (a) (i) and (ii) of the Act, a guardian must report to the Public Guardian and Trustee if any of the following occurs, or if the guardian has reason to believe that any of the following occurred or is about to occur:

- (a) the adult becomes a beneficiary of a trust;
- (b) the adult becomes bankrupt under the *Bankruptcy and Insolvency Act* (Canada);
- (c) a person, other than the guardian, is appointed as the adult’s litigation guardian;
- (d) the guardian is convicted of an offence under
 - (i) the *Criminal Code* (Canada),
 - (ii) the *Food and Drugs Act* (Canada), or
 - (iii) the *Narcotic Control Act* (Canada);
- (e) the guardian has a conflict of interest with the adult;
- (f) the guardian
 - (i) provides personal care or health care services to the adult for compensation, and
 - (ii) is not a near relative of the adult.

Termination of other instruments

1.2 For the purposes of section 33 (5) (a) of the Act, the Public Guardian and Trustee must consider whether

- (a) an attorney or representative acting for the adult is able and willing to exercise his or her powers, and will comply with his or her duties, under the *Power of Attorney Act*, the enduring power of attorney, the *Representation Agreement Act* or financial provisions of the representation agreement, as applicable, and
- (b) the powers under the enduring power of attorney or financial provisions of the representation agreement, as applicable, are sufficient to meet the needs of the adult.

Records of personal guardians

1.3 A personal guardian must keep the following records in relation to the period for which the personal guardian is appointed:

- (a) a copy of the order of the court appointing the personal guardian, and, if applicable, a copy of the registration or confirmation made under Part 3 [*Extraprovincial and Extra-territorial Orders*];

- (b) a copy of all orders of the court made in relation to the personal guardianship of the adult;
- (c) a copy of the plan for guardianship as it relates to the personal care and health care of the adult, including all changes to the plan for guardianship;
- (d) a copy of any record made by the adult of the adult's pre-expressed wishes within the meaning of section 20 of the Act;
- (e) if, since the plan for guardianship was prepared, the adult's residence changes or there is a material change in the needs of the adult with respect to personal care or health care,
 - (i) a description of the nature of the change,
 - (ii) a list of the persons consulted in respect of the change, including the adult, and
 - (iii) a summary of the opinions respecting the change expressed by the persons referred to in subparagraph (ii);
- (f) if the personal guardian made on behalf of the adult a decision respecting
 - (i) major health care within the meaning of the *Health Care (Consent) and Care Facility (Admission) Act*, or
 - (ii) the admission or continued residence of the adult to a care facility within the meaning of the *Health Care (Consent) and Care Facility (Admission) Act*,a description of the decision made, including the date on which it was made;
- (g) if the guardian restricts a person from contacting or associating with the adult,
 - (i) a description of who made the restriction, and who is or was restricted and why,
 - (ii) a list of the persons consulted in respect of the decision to restrict the person, including the adult,
 - (iii) a summary of the opinions respecting the decision expressed by the persons referred to in subparagraph (ii), and
 - (iv) the period of time to which the restriction applied;
- (h) if the adult was physically restrained, moved or managed, under authority granted under section 16 (1) (b) (viii) of the Act or another enactment, a description of who physically restrained, moved or managed the adult and why;
 - (i) if the personal guardian did not comply with a standard established, or a guideline set, in the code of practice, a description of the non-compliance and the reason for it;
- (j) the records required by the Public Guardian and Trustee.

Records of statutory property guardians

1.4 A statutory property guardian who is acting under section 36 of the Act must keep the following records in relation to the period for which the statutory property guardian is acting:

- (a) the notice issued under section 36 (7) of the Act confirming the transfer of the Public Guardian and Trustee's authority as statutory property guardian;

- (b) a copy of the plan for managing the adult's financial affairs submitted to the Public Guardian and Trustee under section 36 (3) (b) of the Act, including all changes to the plan;
- (c) the records referred to in section 1.6 (2) (d) to (l) [*records of property guardians*].

PART 2 – PROPERTY GUARDIANS

Maximum value of gifts, loans and charitable gifts

- 1.5** For the purposes of section 17 (5) (c) of the Act, the total value of all gifts, loans and charitable gifts made by a property guardian in a year must not be more than the lesser of
- (a) 10% of the adult's taxable income for the previous year, and
 - (b) either
 - (i) if approved by the Public Guardian and Trustee, \$20 000, or
 - (ii) without approval of the Public Guardian and Trustee, \$5 000.

Records of property guardians

- 1.6** (1) In this section, “**financial institution**” means
- (a) a bank, including a corporation that is a subsidiary of a bank and is a loan company to which the *Trust and Loan Companies Act* (Canada) applies,
 - (b) a credit union,
 - (c) the B.C. Community Financial Services Corporation established under the *Community Financial Services Act*,
 - (d) an insurance company, or
 - (e) a trust company.
- (2) A property guardian must keep the following records in relation to the period for which the property guardian is appointed:
- (a) a copy of the order of the court appointing the property guardian, and, if applicable, a copy of the registration or confirmation made under Part 3 [*Extrajurisdictional and Extra-territorial Orders*];
 - (b) a copy of all orders of the court made in relation to the property guardianship of the adult;
 - (c) a copy of the plan for guardianship as it relates to the adult's financial affairs, including all changes to the plan for guardianship;
 - (d) a copy of any record made by the adult of the adult's instructions, wishes, beliefs and values regarding the adult's financial affairs, as described in section 21 of the Act;
 - (e) a copy of all other orders of the court made in relation to the adult, whether or not the property guardian is also the adult's personal guardian or litigation guardian;
 - (f) the statements of accounts issued, in relation to the adult's property, by financial institutions;

- (g) the records of registration issued, in relation to land, motor vehicles, manufactured homes or other property of the adult, by a provincial or federal body or agency;
- (h) the records submitted to or issued by, in relation to the taxation of the adult, the Canada Revenue Agency;
- (i) the records of appraisals made in relation to the adult's property;
- (j) a copy of all contracts of insurance made in relation to the adult or the adult's property;
- (k) the records necessary to create full accounts respecting the receipt or disbursement, on behalf of the adult, of capital or income;
- (l) if the property guardian did not comply with a standard established, or a guideline set, in the code of practice, a description of the non-compliance and the reason for it;
- (m) the records required by the Public Guardian and Trustee.

Accounting for discovered or acquired property

- 1.7** For the purposes of section 21 (3) (e) (i) of the Act, a property guardian must deliver to the Public Guardian and Trustee a true account if
- (a) the property guardian discovers undisclosed or incorrectly valued property of the adult, or
 - (b) the adult acquires property,
- that, alone or together with other property that is discovered or acquired, is valued at \$25 000 or more.

Remuneration of property guardians

- 1.8** (1) For the purposes of section 24 (2) (b) of the Act, a property guardian may charge the adult and be remunerated as follows:
- (a) an annual property management fee, being a fee charged at a maximum rate of 0.4% of the gross value of the adult's property administered in the previous year;
 - (b) an annual income fee, being a fee charged at a maximum rate of 5% of the adult's gross income reported on the adult's tax return for the previous year;
 - (c) if approved by the Public Guardian and Trustee, a capital fee, being a fee charged in the amount approved by the Public Guardian and Trustee.
- (2) A property guardian may charge a fee and be remunerated
- (a) in the case of a property management fee or income fee, only after the period to which the fee applies has ended,
 - (b) in the case of a capital fee,
 - (i) at any time the Public Guardian and Trustee permits, and
 - (ii) to a maximum of 5% of the gross value of the adult's property over the entire period for which the property guardian was acting, as that value is determined at the time permission is given, and
 - (c) in any case, only in relation to the period for which the property guardian was acting.

- (3) Regardless of whether more than one property guardian is appointed for an adult, either together or in succession, the total charge to the adult must not be more than the maximum amounts set out in subsections (1) and (2).

Reporting changes in remuneration

1.9 If

- (a) a property guardian notifies the Public Guardian and Trustee, in writing, or
- (b) a plan for guardianship of an adult indicates, in relation to a property guardian,

that the property guardian would not be remunerated for acting as property guardian or would be remunerated in an amount less than that permitted by the regulations, that property guardian must not be remunerated contrary to the notice or plan for guardianship unless the property guardian first reports the change to the Public Guardian and Trustee.

Reduction or disallowance of remuneration

1.10 (1) The Public Guardian and Trustee may consider one or more of the following matters on reviewing a property guardian's accounts:

- (a) whether the adult who is the subject of the accounts appears to be suffering financial hardship;
- (b) the value and nature of the property being administered;
- (c) the degree of responsibility imposed on the property guardian by the court and the Act;
- (d) the
 - (i) time spent by,
 - (ii) apparent degree of ability exhibited by, and
 - (iii) apparent success or failure ofthe property guardian in the care and management of the adult's property;
- (e) whether some extraordinary service has been rendered by the property guardian in the care and management of the adult's property;
- (f) whether it appears that, in determining the value and nature of the property being administered and the remuneration claimed as a result,
 - (i) an error was made, or
 - (ii) an accounting or valuation technique was used that, in the opinion of the Public Guardian and Trustee, was inappropriate.

(2) After reviewing a property guardian's accounts and considering any of the matters set out in subsection (1), the Public Guardian and Trustee may, despite section 1.8 [remuneration of property guardians], do one or both of the following:

- (a) reduce or disallow the amount of remuneration that a property guardian may otherwise charge under that section;
- (b) require a property guardian that has been remunerated under that section to return to the adult all or a portion of the amount remunerated.

PART 3 – EXTRAJURISDICTIONAL ORDERS

Guardians for BC residents

- 1.11 (1) In this section, “**extrajudicial order**” means a judgment, a decree or an order that authorizes a person to carry out duties comparable to those of a guardian, made
- (a) in respect of an adult who is or is about to be ordinarily resident in British Columbia, and
 - (b) by a court or tribunal
 - (i) outside British Columbia but within Canada, or
 - (ii) within the United States of America, the United Kingdom of Great Britain and Northern Ireland, Australia or New Zealand.
- (2) A person acting under an extrajudicial order may apply to the court for an order confirming the extrajudicial order by filing with the court all of the following:
- (a) a plan for the adult’s guardianship;
 - (b) a copy of any known record that is equivalent to a representation agreement, power of attorney, enduring power of attorney and advance directive made by the adult;
 - (c) a copy of the extrajudicial order
 - (i) bearing the seal of the court or tribunal that made it, or
 - (ii) certified by the registrar or other officer of the court or tribunal that made it;
 - (d) an affidavit signed by the person acting under the extrajudicial order stating that the extrajudicial order has not been revoked and has full effect.
- (3) A copy of the application and the accompanying documents must be served on the Public Guardian and Trustee at least 30 days before the date set for the hearing, and the Public Guardian and Trustee may submit written or oral comments to the court.
- (4) The court may
- (a) on considering the documents filed under subsection (2) and any comments submitted under subsection (3), confirm an extrajudicial order, and
 - (b) impose any condition that a court appointing a guardian under the Act could impose, including a requirement to give security under section 8 (5) of the Act.
- (5) If an extrajudicial order is confirmed, the person acting under it
- (a) may exercise powers and perform duties in British Columbia in respect of the adult for whom the person is acting, as if that person were a guardian under the Act, and
 - (b) is subject in British Columbia to any condition imposed by the court under subsection (4) (b).

Guardians for Canadian non-residents

- 1.12** (1) In this section, “**extrajudicial order**” means a judgement, a decree or an order that authorizes a person to carry out duties comparable to those of a guardian, made
- (a) in respect of an adult who is not ordinarily resident in British Columbia, and
 - (b) by a court or tribunal outside British Columbia but within Canada.
- (2) A person acting under an extrajudicial order may register the extrajudicial order under the *Enforcement of Canadian Judgments and Decrees Act*.
- (3) If an extrajudicial order is registered, the person acting under it
- (a) may exercise powers and perform duties in British Columbia in respect of the adult for whom the person is acting, as if that person were a guardian under the Act, and
 - (b) is subject in British Columbia to any conditions set out in the extrajudicial order, except to the extent that those conditions conflict with an enactment of British Columbia.
- (4) If the adult who is subject to an extrajudicial order becomes ordinarily resident in British Columbia, the person acting under the extrajudicial order
- (a) ceases to have the powers and duties of a guardian in British Columbia, and
 - (b) may apply to the court to have the extrajudicial order confirmed under section 1.11.

Guardians for non-residents who are not Canadian

- 1.13** (1) In this section, “**extrajudicial order**” means a judgment, a decree or an order that authorizes a person to carry out duties comparable to those of a guardian, made
- (a) in respect of an adult who is not ordinarily resident in British Columbia, and
 - (b) by a court or tribunal outside Canada but within the United States of America, the United Kingdom of Great Britain and Northern Ireland, Australia or New Zealand.
- (2) A person acting under an extrajudicial order may apply to the court for an order confirming the extrajudicial order by filing with the court all of the records required to be filed under section 1.11 (2) [*guardians for BC residents*].
- (3) The court may on considering the records filed under subsection (2) confirm the extrajudicial order.
- (4) If an extrajudicial order is confirmed, the person acting under it may exercise powers and perform duties in British Columbia in respect of the adult for whom the person is acting, as if that person were a guardian under the Act.

Non-resident public guardians and trustees

- 1.14** (1) A person may exercise powers and perform duties in British Columbia in respect of an adult for whom the person is acting, as if that person were a statutory property guardian under the Act, if
- (a) the adult has property in British Columbia but is not ordinarily resident in British Columbia, and

- (b) the person is
 - (i) a person described in section 39 (1) (a) and (b) of the Act, or
 - (ii) a person described in section 39 (2) of the Act who has registered under the *Enforcement of Canadian Judgments and Decrees Act* a certificate issued by a person described in section 39 (1) (a) and (b) of the Act, certifying that the person registering is acting in the capacity of a statutory property guardian for an adult who is not a resident of British Columbia but holds property in British Columbia.
- (2) Subsection (1) ceases to apply if the adult described in subsection (1) (a) becomes ordinarily resident in British Columbia.

Application of certain provisions

1.15 For the purposes of applying the Act to a person acting under an extrajurisdictional order as defined in any of sections 1.12 [*guardians for Canadian non-residents*], 1.13 [*guardians for non-residents who are not Canadian*] and 1.14 [*non-resident public guardians and trustees*] of this regulation,

- (a) sections 21 (3) (e), 22, 24, 27 (2) and (3), 28 (5), 29 and 30 of the Act do not apply to those persons, and
- (b) in applying section 19 (4) (b) of the Act to those persons, a person must produce the records required under section 19 (4) (a) of the Act for inspection and copying at the request of the adult or the court only.

PART 4 – TRANSITION FROM *PATIENTS PROPERTY ACT*

Definition of deemed property guardian

1.16 In this Part, “**deemed property guardian**” means a person who is deemed to be an adult’s property guardian under section 65 (2) (a) of the Act.

Applications commenced under the *Patients Property Act*

- 1.17** (1) If, before the Act comes into force, an application for a committee has been made, but has not yet been served, in accordance with the *Patients Property Act*, the application is deemed to have been made under section 5 of the Act and to meet the requirements of section 5 (2) of the Act.
- (2) If, before the Act comes into force, an application for a committee has been made and served in accordance with the *Patients Property Act*, the application is deemed to have been made and served under section 5 of the Act and to meet the requirements of section 5 (2) and (3) of the Act.

Powers of deemed property guardian

- 1.18** (1) Despite the repeal of section 17 of the *Patients Property Act* but subject to the duties of a property guardian under the Act, a deemed property guardian may continue to exercise all of the powers under section 17 of the *Patients Property Act* the deemed property guardian could have exercised had that section not been repealed.
- (2) Despite the repeal of section 18 of the *Patients Property Act* and the enactment of section 17 (5) of the Act and section 1.5 of this regulation, a deemed property guardian may make or gifts or loans for the benefit of the adult’s family as

permitted by section 18 of the *Patients Property Act* as if that section has not been repealed.

- (3) Subsection (2) applies only until the deemed property guardian appears before the court on any matter in relation to the adult's guardianship.

Reporting of substantial changes by deemed property guardian

1.19 For the purposes of applying section 1.1 [*reporting of substantial changes*] to circumstances that occur before that section comes into force, a deemed property guardian must

- (a) report only those circumstances that occurred in the two month period before section 1.1 comes into force, and
- (b) make the report within three months of that section coming into force.

Remuneration of deemed property guardian

1.20 (1) A deemed property guardian must not be remunerated for acting as a committee or a property guardian except as follows:

- (a) in respect of remuneration to which the deemed property guardian became entitled under the *Patients Property Act* before the repeal of that Act, the remuneration that is approved by the Public Guardian and Trustee on the passing of accounts before the Public Guardian and Trustee;
 - (b) in respect of remuneration to which the deemed property guardian is entitled after the Act comes into force, if the person has passed accounts before the Public Guardian and Trustee at least once, the remuneration to which a property guardian is entitled under section 24 of the Act.
- (2) The total remuneration received by a deemed property guardian under subsection (1) must not be more than that permitted under section 1.8 [*remuneration of property guardians*].