

What You Should Know About Applying to Be a Guardian for an Adult

Adult Guardianship Self-Help Guide



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Public Guardian and Trustee of Yukon

Information Resources – Whitehorse, Yukon

Seniors' Services/Adult Protection

867-456-3946; toll free (in Yukon) 1-800-661-0408, local 3946

Email: hss@gov.yk.ca

Web site: www.hss.gov.yk.ca/seniorservices.php

Location: 100–204 Black Street

Office of the Public Guardian and Trustee

867-667-5366; toll free (in Yukon) 1-800-661-0408, local 5366

Email: publicguardianandtrustee@gov.yk.ca

Web site: www.publicguardianandtrustee.gov.yk.ca

Location: Third Floor Andrew A. Philipsen Law Centre, 2134–2nd Avenue

Yukon Public Law Library

867-667-3086; toll free (in Yukon) 1-800-661-0408, local 3086

Email: yukon.law.library@gov.yk.ca

Web site: www.justice.gov.yk.ca/prog/cs/library.html

Location: Ground Floor Law Courts, 2134–2nd Avenue

Registry of the Supreme Court of Yukon

867-667-5937; toll free (in Yukon) 1-800-661-0408, local 5937

Email: courtservices@gov.yk.ca

Web site: www.yukoncourts.ca/courts/supreme.html

Location: Ground Floor Law Courts, 2134–2nd Avenue

Non - Government

Yukon Public Legal Education Association (YPLEA)

867-668-5297; toll free (in Yukon) 1-866-667-4305

Email: ypleyt@gmail.com

Web site: www.yplea.com

Law Society of Yukon (Lawyer Referral Service)

867-668-4231; toll free (in Yukon) 1-800-661-0408, local 5937

Email: info@lawsocietyyukon.com

Web site: www.lawsocietyyukon.com

Lawyer Referral Service – half-hour consultation with a lawyer – \$30 incl. GST

Lawyers

To contact a lawyer's office, look in the phone directory under "Lawyers" in the Yellow Pages or under names of local law firms

IMPORTANT!

This guide has been produced by the Office of the Public Guardian and Trustee in the Yukon Department of Justice. It is intended to be used as a guide only and is not considered a comprehensive legal resource.

The information provided does not replace a lawyer's advice and cannot teach you everything you need to know. Even if you decide to proceed without a lawyer, you should consult a lawyer for interpretation of the law that applies to your case and for other legal advice.

The information provided in this guide is believed to be correct as of its date of publication. Please refer to the **List of Key Words Used in Adult Guardianship** for definitions of any unfamiliar terms used in this guide.

WHAT YOU SHOULD KNOW ABOUT APPLYING TO BE A GUARDIAN FOR AN ADULT

Introduction

This information is for people who are considering applying to the Supreme Court to be appointed a guardian for an adult whom they believe is incapable of handling all or part of their own affairs. It provides general information about making a decision to proceed with an application to the court for guardianship.

Part 3 of the *Decision Making, Support and Protection to Adults Act, Schedule A, Adult Protection and Decision Making Act* (the "Act") sets out the legal process for granting powers of decision-making to a guardian. Any Yukon resident 19 years of age or older who meets the criteria for an "incapable adult" set out in the Act may be the subject of a guardianship order under the Act and may have a legal decision-maker or guardian appointed by the court.

The appointment of a guardian for an adult who is incapable of managing their own affairs (the "adult") must be in the best interests of that adult. The guardian is accountable to the court for decisions made on behalf of the adult.

What is guardianship?

Guardianship is a legal process which gives a person the proper authority and responsibility to manage the affairs of an adult and to care for, assist and protect that adult. "Affairs" include activities of daily living and other personal matters, health care, legal matters and financial affairs.

The decision to apply for guardianship of an adult must be made carefully. Section 37 of the Act sets out the limits to a guardian's authority:

“The Supreme Court may give a guardian only the authority that

- (a) is necessary to make, or assist in making, decisions about the adult’s affairs;
- (b) will result in the most effective, but the least restrictive and intrusive form of assistance and support for the adult; and
- (c) is required to provide the care, assistance, and protection necessary to meet the adult’s needs.”

This means that the focus of decisions made by a guardian must be in the best interests of the adult. As guardian, you must give the adult every opportunity to contribute to their own care and life decisions. A guardian or anyone else should not restrict and/or control the adult.

A guardian is:

- not held responsible for the inappropriate behaviour or actions of an adult unless the guardian has contributed to them in some way;
- not expected to personally provide the necessities of life; however, the guardian is responsible for advocating or consenting to the best possible options available to the adult;
- expected to seek out and consider the wishes and values of the adult; and
- expected to act diligently and honestly and show good faith in representing the adult.

Before applying for guardianship, you should determine if the adult has an Enduring Power of Attorney, an Advance Directive, a Supported Decision-Making Agreement or a Representation Agreement in place, and what that document states. The court needs to be satisfied that less intrusive forms of support and assistance than guardianship have been tried or carefully considered before ordering the appointment of a guardian.

An adult may have a guardian appointed to handle all or only part of their affairs. For example, a guardian may be appointed to handle the financial affairs of an adult while the adult continues to make their own decisions about daily living and other personal matters.

Choosing to be a guardian

Choosing to become a guardian for an adult is a serious responsibility. A parent, sibling or friend of an adult does not automatically have the legal right to make decisions on the adult’s behalf. You or your family may be concerned that you are in some way taking away the rights of the adult. However, guardianship allows for an adult’s rights to be exercised by a person (the guardian) who is accountable to the court. That person must show that they can support the adult while at the same time ensuring that he or she receives the same legal entitlements as other adults.

Consider the following when deciding who will be the most appropriate person to apply for guardianship:

- Who is able to maintain regular contact with the adult?
- Which person does the adult trust?
- Who has a close relationship with the adult?

Is a guardian necessary?

The decision to apply for guardianship may be a difficult choice. It may be helpful to consider the following points when you discuss the adult's need for a guardian.

- Does the adult understand the consequences of any decisions that are made?
- Can the adult make reasonable decisions?
- Is the adult's health care treatment or services suitable for their needs?
- Is the adult at risk of having others take advantage of them?
- Can the adult look after daily needs such as dress, diet, or personal care?
- Is guardianship the most effective way of meeting the adult's needs?
- What are the adult's preferences?
- Is the adult's accommodation appropriate for them?
- Are the adult's contacts and activities appropriate?
- Is the adult able to work?
- Does the adult wish to work?
- Is the adult aware of their educational, vocational, or other training needs?
- Does the adult understand their legal rights?
- Are the adult's values and beliefs being adequately represented?
- Has the adult entered into any type of agreement (such as an Enduring Power of Attorney, a Supported Decision-Making Agreement, a Representation Agreement or an Advance Directive) that appoints a decision-maker and gives instructions about personal decisions to be made for them in the future?

Who can apply to become a guardian?

A guardian can be a person who is a relative or close friend of the adult.

Being a guardian means you are legally authorized to manage all or part of the adult's affairs once the court has found the adult to be incapable of doing so on their own. An incapable adult needs the care, protection and assistance of a guardian. You will assist and make decisions for the adult, monitor and advocate for any required services, and ensure that the adult's rights are protected.

The court may appoint you as the adult's guardian if you:

- are 19 years of age or over;
- are, in the court's opinion, suitable to act as the adult's guardian; and
- agree to comply with the duties of a guardian as set out below.

The duties of a guardian include:

- acting honestly and in good faith;
- exercising the care, diligence, and skill of a "reasonably prudent person";
- acting within the authority granted in the court order; and
- encouraging and assisting the adult to care for and make decisions about the adult, and managing or participating in the adult's affairs.

As the adult's advocate you:

- talk with everyone who has information relevant to a situation or a decision that needs to be made, keeping in mind the adult's privacy;
- represent the interests, values, wishes and needs of the adult;
- may be the one to ask the most difficult questions, such as asking about risks, alternatives or back-up plans;
- make sure that in all discussions and consultations, the focus remains on the best interests of the adult; and
- help make or make decisions on their behalf.

What is the monitoring and evaluation role of the guardian?

To "monitor" is to check or review a situation. To "evaluate" is to judge the worth, quality or importance of something. For example, in your own life, you monitor household supplies for the need to re-supply and you evaluate the quality of those supplies based on how well they meet your needs.

You already know how to monitor and evaluate in your own life. A guardian must learn to use the same skills for the benefit of the adult. For a guardian to be able to effectively monitor and evaluate for an adult, you must develop a good working relationship with the professionals, service providers and caregivers serving the adult.

Deciding appropriate areas of guardianship

The court can make a Guardianship Order after carefully considering the adult's needs, capabilities and circumstances. The court must have as much information as possible in order to determine if guardianship is in the adult's best interests and will result in a substantial benefit to the adult.

The process for filing a guardianship application is explained in more detail in the guide called **How to Apply for Adult Guardianship**. This process involves completing a number of forms and filing them in the Supreme Court of Yukon for a judge to review.

The first step is to have a qualified assessor complete an **Incapacity Assessment Report** (Form 6). Information concerning assessors and incapacity assessments is available from the Public Guardian and Trustee (PGT) Office and the PGT web page. If the assessor finds that the adult is capable, you must discontinue the process of applying for guardianship. If the adult is found to be incapable, you can continue the application process.

The Incapacity Assessment Report must state:

- the likelihood of change in any incapability;
- that the adult is incapable of managing their own affairs;
- that some or all of the adult's affairs need to be managed by a guardian; and
- that the adult will benefit from the appointment of a guardian.

You must provide specific information to show the adult's inability to handle their own affairs, and if the adult would benefit from the assistance of a guardian. For example:

- Family members or the adult's physician may notice that an elderly adult seems to be having difficulty in certain areas, such as paying their monthly bills or keeping track of their finances. Guardianship could be granted to assist the adult in this area.
- A developmentally disabled person turns 19 years of age. The young adult's parents are no longer in a legal position to make the kinds of decisions they have always made for the adult, yet the parents feel the young adult still requires some assistance.

Making decisions in areas of adult guardianship

A guardian is expected to exercise power and authority in a manner that uses the least restrictive alternative when a choice must be made.

A Guardianship Order may authorize a guardian to make decisions about many aspects of an adult's life, and may include assisting with some or all of the following:

- where the adult will live;
- personal contacts;
- social activities;
- employment;
- education and training;
- licences and permits;
- legal matters;
- health care;
- daily living routines; and
- financial matters.

When a guardian has more than one role in the life of an adult, the guardian must take into account a number of new issues when making guardianship decisions. For example:

- If you are the *parent* as well as the guardian, you must consider the adult and their lifestyle, values and interests as part of a guardianship decision.
- If you are also a financial guardian, the decisions you make in managing the adult's financial affairs must also reflect and respect the values, beliefs, wishes and cultural norms and traditions that the adult holds.
- If you are the guardian, the adult does not have to live with you. However, you may have the responsibility to decide where the adult will live if this area of decision making is specified in the Guardianship Order.

A guardian's responsibilities are based on the needs of the adult. As each adult's needs and capabilities differ, so do the responsibilities of each guardian.

Choosing the appropriate guardianship option

In your application for guardianship, you will need to decide which guardianship option you believe would work best for the adult. For instance, you might be the principal guardian, you may be part of a

joint guardianship arrangement, and/or you may designate (an) alternate guardian(s). You may wish to include other guardians for specific purposes and assign different powers to different guardians.

- **Joint guardianship**

Being a joint guardian means that you share the role with one or more persons. The Supreme Court will assign specific areas of authority to each guardian. The court will name the guardian who is the principal guardian and spokesperson for the guardians, and may also specify a method for resolving any disputes between or among guardians.

- **Guardians and powers**

Your application may request the assignment of different powers to different guardians, or set out other terms and conditions for the exercise of the powers of different guardians. You will need to provide details of the responsibilities for each guardian in your application.

- **Temporary guardianship**

In urgent circumstances a person may apply to the Supreme Court for an order appointing a temporary guardian where:

- the applicant has reason to believe that the adult is incapable of managing all or part of their financial affairs;
- an order is necessary to protect the adult from financial damage; and
- a delay would not be in the best interests of the adult.

A temporary guardian may not be appointed for more than 180 days. If the appointment is for more than 30 days, the court will direct the temporary guardian to comply with the process for applying for permanent guardianship.

You can obtain a Temporary Guardianship Application and other forms from the PGT office or on the PGT adult guardianship web page at <http://www.publicguardianandtrustee.gov.yk.ca/adultguardianship.html>.

For further information, please see the enclosed chart at the end of this publication that compares Temporary Guardianship Orders and Guardianship Orders, and the guide **How to Apply for Temporary Guardianship of an Adult**.

Appointing an alternate guardian

The Act also allows for the appointment of an alternate guardian. For example, you may wish to have an alternate guardian to take on duties if you are on holidays, in the event of your death, or if you are unable to act for any other reason.

An alternate guardian should be chosen carefully. Both the guardian and the alternate guardian should be familiar with the adult's needs and circumstances, and be able to make effective decisions.

You may ask the court to appoint (an) alternate guardian(s) to work with you as the principal guardian and to take on specific duties, such as looking after the adult's financial matters.

If an alternate guardian is not appointed and you become incapable, or you die, or are unable to act for any other reason, the PGT may exercise the authority of the guardian until a new guardian is appointed under the Act.

Can I take a break from being a guardian?

Yes, but only if you have an alternate guardian named in your Guardianship Order. If you have an alternate guardian named in the Guardianship Order, you can give the alternate guardian written authorization to take over in your temporary absence. Sections 33 and 34 of the Act provide information on the appointment of an alternate guardian.

Can I change my mind about being a guardian?

Yes. If you decide you no longer wish to be a guardian, you can make an application to the Supreme Court to have someone else appointed to replace you as guardian.

COMPARISON OF TEMPORARY GUARDIANSHIP ORDERS AND GUARDIANSHIP ORDERS

Decision Making, Support and Protection to Adults Act, Schedule A
(Adult Protection and Decision Making Act)

TEMPORARY GUARDIANSHIP ORDER	GUARDIANSHIP ORDER
General	
<p>A Temporary Guardianship Order (TGO) is obtained on an emergency basis when the Supreme Court is satisfied that there are reasonable grounds for believing that:</p> <ul style="list-style-type: none"> • an adult is incapable of managing all or part of their financial affairs; • the TGO is necessary to protect the adult from financial loss or damage; and • applying for a full guardianship order would cause delays that would not be in the best interests of the adult [s. 35(6)]. <p>The person applying for the TGO must have reason to believe that all three of those factors are present [s. 35(1)].</p>	<p>A Guardianship Order (GO) is obtained when the Supreme Court is satisfied that:</p> <ul style="list-style-type: none"> • an adult is incapable of managing all or part of their affairs; • the adult needs the care, assistance and protection of a guardian; and • less intrusive forms of available support and assistance than guardianship have been tried or carefully considered [s. 32(1)]. <p>The person applying for the GO must establish that a GO is necessary under all of the above points [s. 31(4)].</p>
Limitations and Authority	
<p>A TGO can only be obtained in circumstances where it is necessary to protect the adult from financial loss or damage – it cannot be used to decide such things as where the adult can live, where an adult can work, the daily living activities of an adult such as hygiene, social activities or companions, or to obtain legal services for an adult [s. 35(8)].</p> <p>A TGO gives the temporary guardian the authority to do anything necessary to preserve and protect an adult from financial damage or loss [s. 35(7)].</p>	<p>A GO is not limited like a TGO – a GO can, with the permission of the Supreme Court, provide a broad range of authority to make decisions for an adult including where an adult can live, where an adult can work, the daily living activities of an adult such as hygiene, social activities or companions, and to obtain legal services for an adult.</p>

TEMPORARY GUARDIANSHIP ORDER	GUARDIANSHIP ORDER
Duration	
A TGO can be in effect for no more than 180 days [s. 35(9)].	A GO can be for the duration of the adult's life and can be periodically reviewed by the Supreme Court [s. 28(1), 37(2) and 51].
Service of Documents	
<p>While the legislation states that there is no legal requirement to serve the TGO application on anyone [s.35(3)], the Supreme Court has indicated in Practice Direction #55 that the application should be served on:</p> <ul style="list-style-type: none"> • the incapable adult; • the Public Guardian and Trustee; and • the Adult Protection Unit of the Government of Yukon. <p>If time permits, the application must be filed with the Supreme Court and served at least 7 days prior to the TGO hearing [s. 30(5) and 30(6)].</p> <p>The TGO application (Form 3T), as well as forms 4T and 5T, must be filed with the Supreme Court and served on these parties.</p>	<p>There is a legal requirement for materials in support of the GO to be filed with the Supreme Court and served on specified individuals. The GO application (Form 3) as well as Forms 4 to 7 (available from PGT web site) must be filed with the Supreme Court and served at least 7 days prior to the GO hearing on the following (s. 30):</p> <ul style="list-style-type: none"> • the incapable adult; • the adult's spouse, the adult's child, parent or adult sibling; • the proposed guardian; • the hospital or care facility where the adult resides; • the Public Guardian and Trustee; • a person acting on behalf of an adult under a power or attorney; • a person who is a proxy for the adult under a directive; • a person who is an associate decision-maker for the adult under a supported decision-making agreement; • a person who is a representative for the adult under a representation agreement; • any other person the Supreme Court may direct.

TEMPORARY GUARDIANSHIP ORDER	GUARDIANSHIP ORDER
Incapacity Assessment Report	
<p>There is no requirement for an Incapability Assessment Report when a TGO is requested for 30 days or less [s. 35(2)]. However, Supreme Court Practice Direction 55 requires a written opinion from a medical practitioner (a doctor) or registered nurse to be filed with the TGO application.</p> <p>If a TGO is granted by the Supreme Court for more than 30 days, the judge may direct the temporary guardian to obtain an Incapability Assessment Report and to file and serve other documents in support of the application [s. 35(10)].</p> <p>When an application is made for a TGO it is because the applicant believes that it may be necessary to proceed with a permanent guardianship application based on an Incapability Assessment Report.</p>	<p>An Incapability Assessment Report (Form 6) is required when making a guardianship application [s. 30(1)]. The assessor must also include a copy of their <i>curriculum vitae</i> with their assessment.</p> <p>The Incapability Assessment Report should only cover those areas (financial, health, legal and personal care) under which you are applying for guardianship.</p>
Guardian Accountabilities	
<p>Once a TGO is granted, the temporary guardian is accountable to the Supreme Court by:</p> <ul style="list-style-type: none"> • acting honestly and in good faith; • exercising the care, diligence and skill of a reasonably prudent person; and • acting within the authority granted in the court order [s. 43(1)]. 	<p>Once a GO is granted, the guardian is accountable to the Supreme Court by:</p> <ul style="list-style-type: none"> • acting honestly and in good faith; • exercising the care, diligence and skill of a reasonably prudent person; • acting within the authority granted in the court order; • encouraging and assisting the adult to care for and make decisions about the adult, and to manage or participate in managing the adult's affairs; and • complying with the Preliminary and any Subsequent Guardianship Plans.

NOTES

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ISBN 978-1-55362-584-1

For more information, or to obtain copies of these publications, please contact:

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