

What a Guardian Should Consider When Making Decisions

FACT SHEET #1

The areas of decision making as a guardian are stated in the Guardianship Order. A guardian's decision-making process is unique because the guardian is always making or assisting to make decisions on behalf of someone else, the incapable adult (the "adult"). As a guardian, you may be asked to provide consent on behalf of the adult. For example, a doctor may require you to sign a consent on behalf of the adult.

What information do I need when making a decision as guardian?

Information about the adult comes from everyone involved in the situation. For example, residential information comes from the adult, friends and family, past and current caregivers, future residential placement experts and other guardians. Medical information comes from friends and family, past and current caregivers, homecare workers, social workers, physiotherapists, nurses and doctors. It is an important part of the consent process to get all the information before making a decision or signing a consent. Please keep in mind the privacy and dignity of the adult during the information-gathering process.

What is a consent?

A consent provides a legal authority for someone to carry out a decision on behalf of another person. A guardian's decisions are given in the form of written and/or oral consent. You may be asked to sign a document which confirms your decision or to give a witnessed written or oral consent. All formal guardian consents may be reviewed by the court.

What is a valid consent?

A valid consent must be:

- made by a person who is competent to make the decision;
- informed;
- specific; and
- voluntary.

A person who is **competent** to make decisions understands the implications and consequences of the decision they are making. For some matters, an adult may be competent and should be encouraged to participate in making decisions, while for others, the guardian will need to make the decision.

An **informed** decision is based on knowledge and information specific to the decision to be made. It is a decision based on knowing the alternatives, weighing the pros and cons, and making a choice. Professionals involved with the adult have an obligation to provide the guardian with information that is relevant to the decision they must make.

Consent must be **specific**. This means that it clearly outlines the actions being approved, the circumstances under which approval is given, and the time frame for which the consent is valid.

Consent must be *voluntary*. In other words, the person has the choice to give or refuse to give consent.

Section 38 of the *Decision Making, Support and Protection to Adults Act, Schedule A, Adult Protection and Decision Making Act, Part 3*, sets out the powers of a guardian. The court order states the specific areas of authority granted to the guardian. As a guardian, your consent can only apply to those areas of authority.

This fact sheet is one in a series to provide assistance and information regarding guardianship under the *Decision Making, Support and Protection to Adults Act, Schedule A, Adult Protection and Decision Making Act, Part 3*. This legislation can be found at <http://www.gov.yk.ca/legislation/acts/Aadpr.pdf>.

For more information please call your lawyer or refer to the resource list available from the Office of the Public Guardian and Trustee.

**FOR MORE INFORMATION, CONTACT
THE OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE**

address: Andrew A. Philipsen Law Centre, 3rd Floor, 2134 Second Ave, Whitehorse

mail: Box 2703 (J-2B) Whitehorse, Yukon Y1A 2C6

phone: 867-667-5366

outside of Whitehorse (toll free) 1-800-661-0408 ext. 5366

fax: 867-393-6246

e-mail: publicguardianandtrustee@gov.yk.ca

website: www.publicguardianandtrustee.gov.yk.ca