

How Does a Guardian Deal with Legal Issues?

FACT SHEET #7

The Guardianship Order granted by the court will state the specific areas of authority granted to you as the guardian. As a guardian, you have been granted the authority to “obtain legal services for the adult and instruct counsel to commence, continue, compromise, defend, or settle any legal proceeding on the adult’s behalf.”

Legal matters which might fit into this area include:

- signing a waiver;
- responding to a complaint about the actions or behaviour of an incapable adult (the “adult”);
- appealing a decision where the adult may not be receiving benefits or services to which they are entitled;
- helping an adult with any legal problems; and
- when the adult needs legal consultations or services.

Who directs a lawyer acting on behalf of an adult?

If the adult has been found incapable of making legal decisions, the guardian can help the adult make contact with appropriate legal services, support the legal service provider (help fill out forms, provide necessary information when requested, help the adult tell his or her story, etc.) and monitor legal procedures on behalf of the adult.

The guardian can also assist or instruct the lawyer and help ensure the adult receives a fair hearing. If the adult is in a position where they must plead guilty or not guilty in a criminal court matter, the lawyer can help make this decision. If the adult is capable of making legal decisions, the lawyer or guardian **cannot** make this decision on behalf of the adult. The adult must be the one to make this decision.

The guardian should consider the following questions when deciding to act in this area:

- What are the legal or other implications of the decisions needed?
- Does the situation involve the adult’s finances?
- Would the adult’s interests be served by involving legal services?
- Is there another way of dealing with the situation which would also protect the adult’s rights?
- What will the adult gain by using the legal system? Is there another option? Will this affect other areas of the adult’s life?
- How will legal services be obtained? How much will it cost? Does the adult qualify for Legal Aid?

Legal decisions are difficult at all times. It is always recommended to speak to a lawyer about any legal matters. Community resources (such as the Yukon Public Legal Education Association and the Yukon Law Society’s Lawyer Referral Service) are available to help a guardian in this area.

This area of authority of a guardian can be found in Section 38(1)(e) of the *Decision Making, Support and Protection to Adults Act, Schedule A, Adult Protection and Decision Making Act, Part 3*.

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
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