

AGTA – Personal Matters

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INTRODUCTION

The ***Adult Guardianship and Trusteeship Act*** (“**AGTA**”) came into effect on October 30, 2009.

The initial information released on this legislation made me think this would be another area of law (similar to personal injury with the cap on certain injury settlements) in which lawyer involvement would be significantly reduced. The legislation is “forms” driven legislation. An admirable intent of the legislation and accompanying regulations is to provide forms designed to allow the public to complete the appropriate application forms without legal assistance.

I have now changed my thinking. The regulations call for more forms, which require more detailed information than before. I am hearing from clients finding not only the volume of documents intimidating, but also the nature of the information to be provided as set out in the ***Regulations***. This leads me to think there will continue to be a need for lawyers and their legal assistants who understand the **AGTA** and its regulations and can provide legal services to clients.

The numerous forms and detailed information make it difficult for lawyers to dabble in the Guardianship and Trusteeship area, as this will not be cost effective for the lawyer or the client. It takes a significant amount of time to not only familiarize oneself with the forms but to also understand how to complete the forms to satisfy the underlying principals of the **Act** in order to provide effective advice in Co-Decision Making or Guardianship applications. We are now dealing with an administrative person (Review Officer) who will be providing a report to be considered by the Justice considering the application. An understanding of how the Review Officer (“RO”) considers our documents and prepares the report to the Justice will minimize delays in our applications resulting from incomplete documents or the RO requiring further information.

We are still in the “learning” stage as we work with the forms and discover the expectations of the Review Officer. The purpose of this paper is to provide some comments and practical tips for completing the forms for personal matter applications based on my experience to date. For the purpose of this paper:

- “personal matter applications” refers to applications under the **AGTA** for:
 - Co-Decision Making Order
 - Guardianship Order
- “CDM” means Co-Decision Making Applications

- “Guardianship” means Guardianship Applications

HISTORY

It is important to understand the history behind the **AGTA** prior to completing the forms. A detailed history of the **AGTA** is included in the introduction materials of the Legal Education of Alberta seminar entitled “**Bill 24 - Alberta Guardianship and Trusteeship Act**” held in the fall of 2009. Lawyers should, at a minimum be aware of the following:

- The **Adult Guardianship and Trusteeship Act (“AGTA”)** replaces the **Dependant Adults Act (“DAA”)**.
- The decision to replace the **DAA** came after consultations with the public and mental health organizations, who raised concerns with the underlying philosophy of the **DAA**.
- Under s. 7 of the **DAA** the Court could appoint a Guardian for an adult if the adult was repeatedly or continuously unable:
 - (i) to care for himself or herself; and
 - (ii) to make reasonable judgements in respect to matters relating to his or her person.
- If the Court was not satisfied on these two criteria, Guardianship could not be granted. There were no other options for assisting an adult who had diminished mental capacity and did not fall within the criteria for Guardianship.
- The **DAA** did not reflect the growing research showing various stages of mental capacity and fluctuations within those stages. As a result the Alberta Government brought in the **AGTA** based on principals which reflect the growing research on the different stages of mental capacity.

AGTA PRINCIPLES

It is important to keep in mind the principles of the **AGTA**, as the RO will consider the principals in reviewing the submitted documents. s. 2 of the **Act** sets out the principles for interpreting and administrating the **Act** as follows:

- “(a) an adult is presumed to have the capacity to make decisions until the contrary is determined;
- (b) an adult is entitled to communicate by any means that enables the adult to be understood, and the means by which an adult communicates is not relevant to a determination of whether the adult has the capacity to make a decision;