

***Adult Guardianship and Trusteeship Act – New Protections  
for Vulnerable Albertans: Overview of new Capacity  
Assessment, Review Officer and Protective Measures  
Processes***

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Prepared By:  
**Brenda Lee Doyle**  
**Office of the Public Guardian**  
**Edmonton, Alberta**  
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The *Adult Guardianship and Trusteeship Act* (AGTA) was proclaimed on October 30, 2009 and replaces the 30 year old *Dependent Adults Act* (DAA). The AGTA is the result of extensive consultations that occurred in 2005/2006. Consultation reports and the Final Report and Recommendations from the review were made publicly available at each stage of the consultations and can still be viewed on Alberta Seniors and Community Supports website at [www.seniors.gov.ab.ca](http://www.seniors.gov.ab.ca). Information gleaned from the consultation process provided the foundation for the new legislation.

The AGTA is anchored in guiding principles which include: presuming an adult is capable unless the contrary is determined; that the least intrusive form of decision making assistance is utilized; the manner in which an adult communicates is not relevant to his/her capacity; and that substitute decisions are made in the adult's best interests and consider the wishes, values, and beliefs the adult held while capable.

The AGTA principles provided a foundation for the creation of new, less intrusive forms of decision making support, beyond guardianship and trusteeship. These options are outlined below.

- Supported Decision Making Authorizations (SDMA) allow capable adults to authorize someone they trust (called a Supporter) to help them with personal decisions. A regulated form is utilized and allows the Supporter to access relevant information that might otherwise be protected under privacy laws. The Supporter is also able to help the adult think through and communicate decisions. SDMAs will be useful for capable individuals with communication barriers (e.g., first language is not English, people with mild disabilities).
- Specific Decision Making allows a health care provider to assess an adult's ability to make a particular health care or temporary admission/discharge from a residential facility decision. Where the adult has been assessed as incapable of making the specific decision, the health care provider may then select, from a ranked list, the nearest relative of the adult to make the decision. This provision is initiated at the discretion of a health care provider and is intended to address situations where an adult does not have a guardian or personal directive and a time sensitive decision needs to be made.
- Co-decision Making Orders (CDMOs) allow adults assessed as significantly impaired to consent to a Court order appointing trusted person(s) as their co-decision maker(s). The order requires the adult to make all or certain personal decisions with their co-decision maker. The intent is the adult and the co-

decision maker make decisions in partnership. This option may be appropriate when the adult has a strong, positive relationship with his/her co-decision maker (e.g., wife acting as a co-decision maker for her brain injured husband). The Public Guardian can not be a co-decision maker. CDMOs are issued by the Court of Queen's Bench.

- Guardianship Orders remain an option for adults assessed as incapable. The Court of Queen's Bench may appoint a guardian to make all or certain decisions for a represented adult. Usually a family member or friend acts as the represented adult's "private" guardian. If there is no able, willing, or suitable person to take on the role, the Public Guardian may be appointed guardian for the adult.
- Trusteeship Orders appoint a trustee to make financial (including property) decisions on behalf of incapable adults. Usually a family member or friend acts as the represented adult's "private" trustee. If no one is able, willing, or suitable, the Public Trustee may act as the adult's trustee.
- Urgent Guardianship or Trusteeship Orders may be granted by the Court of Queen's Bench for a period not exceeding 90 days where there is reason to believe an adult lacks capacity to make personal or financial decisions and there is an immediate danger of death/serious harm or financial loss.

With the exception of SDMAs, the AGTA addresses situation where an adult has not done advanced planning. In Alberta, there are two pieces of legislation that allow adults to plan for a time when they may not be able to make their own decisions due to incapacity: (1) the *Personal Directives Act* (PDA) and (2) the *Powers of Attorney Act* (PAA).

This paper will focus on specific elements of the AGTA including capacity assessment and the Review Officer role in Court processes. (3) Protective Measures under the AGTA, and (4) Specific Decision Making and Emergency Health Care. This paper also provides an overview of data compiled thus far on implementation of the AGTA.

## **CAPACITY ASSESSMENT AND THE AGTA**

The capacity assessment model under the AGTA is aligned with the concept of a least intrusive approach and reflects the reality that people's abilities vary and capacity is not "all or nothing". Further, the process for conducting capacity assessments is intended to be more respectful of an adult's rights under Sections 7 and 15 of the *Canadian Charter*