

The *Adult Guardianship and Trusteeship Act*: What Have We Learned?

Prepared For: Legal Education Society of Alberta

48th Annual Refresher: Wills & Estates

Presented by:

Stacy K. Hennings

Office of the Public Guardian and Trustee

Edmonton, Alberta

For Presentation In:

Lake Louise – April 19 – 21, 2015

THE ADULT GUARDIANSHIP AND TRUSTEESHIP ACT: WHAT HAVE WE LEARNED?

INTRODUCTION

It has been five years since *The Adult Guardianship and Trusteeship Act*¹ (“AGTA”) and the Adult Guardianship and Trusteeship Regulation² (“Regulations”) were brought into force and effect. This paper will provide: an overview of the application options available under this legislation and includes a few “takeaways” that you can incorporate into your practice to master the application process, to limit delay and obtain the orders your clients want.

A. APPLICATIONS: CHOOSING THE RIGHT APPLICATION

When drafting guardianship, trusteeship or a combined application consider the application options and choose the one best suited to the facts of the file and the result your client is looking for. First, identify the applicable sections of the AGTA that apply and then find the corresponding *Regulations*. The *Regulations* identify the required forms for each application and the steps required whether the application proceeds by desk or direct to hearing.³

I regularly find myself rereading the AGTA and the *Regulations* when drafting applications because every file is different. With each file I question: whether I am filing the right type application; whether I have drafted my documents using the correct forms; who are the people who need to be served and in what manner can service be effected; whether the evidence being relied upon is sufficient; and whether the relief sought is clearly identified and adequately addressed in the affidavit.

1. Desk application

The desk application is the preferred process under the legislation. The Office of the Public Guardian as well as the Court encourages the general public and lawyers to utilize the desk application process.

Section 111 of the AGTA supports the view that the desk process is the preferred or default process:

111 (1) Subject to the *Regulations*, the Court may consider and determine an application for an order under section 13, 21, 26, 27, 40, 46, 48, 63 or 70 in the absence of the applicant and any other persons if

¹ SA 2008, c A-4.2

² Alberta Regulation 219/2009

³ At Appendix see Alberta Human Services “Information for Legal Professionals – Form Requirements” Chart to identify forms required under basic applications. For further resources go to <http://www.humanservices.alberta.ca/guardianship-trusteeship/forms-and-instructions.html>

(a) no person who is entitled by the *Regulations* to request a hearing has, in accordance with the *Regulations*, requested a hearing, and

(b) the Court is of the opinion that it is not necessary to hold a hearing.

(2) On considering and determining an application for an order referred to in subsection (1), the Court shall satisfy itself that the views and wishes of the adult who is the subject of the application are considered where appropriate.

The Office of the Public Trustee utilizes the desk application process for most initial applications. A review of trusteeship order combined with an application for examination and approval of trusteeship accounts are also common desk applications submitted by the Public Trustee. Counsel for the Public Trustee file urgent applications and proceed direct to hearing when the circumstances are appropriate.

2. Urgent Application

An urgent order is available in limited circumstances. Section 27(3) of the AGTA states that the Court may grant an urgent order for guardianship if the Court is satisfied that there is evidence to support that:

- a. the adult lacks the capacity to make a decision about a personal matter, and
- b. is in immediate danger of
 - (i) death, or
 - (ii) suffering serious physical or mental harm

if a guardianship order is not granted under this section.

For trusteeship the Court may grant an urgent order under section 48 of the AGTA. The Court must be satisfied that an adult:

- a. lacks the capacity to make a decision about a financial matter, and
- b. is in immediate danger of suffering serious financial loss if an order is not granted.