

Capability and  
Consent Tool  
B.C. Edition

## Introduction

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The Capability and Consent Tool, BC Edition, was developed to assist health care providers to navigate through the complicated system of guardianship and substitute decision making legislation in BC. It provides a schematic for various areas of decision making and the corresponding legal framework to guide decision making in those areas. This document does not replace legal consultation and should not be considered legal advice.

This tool is meant to be used following the principles and presumptions embedded in BC's Adult Guardianship Legislation, specifically:

- adults are presumed capable to make their own choices about financial, personal, and health care matters
- adults are entitled to live in the manner they wish and to accept/refuse supports as long as they do not harm others and are capable
- intervention/protection is least intrusive and most effective when adults are unable to care for themselves
- previously expressed values, wishes and beliefs of capable adults are to be followed whenever possible
- intrusive measures such as Court Orders and Certificates of Incapability are a last resort

When deciding whether it is in the adult's best interests to give, refuse or revoke substitute consent, the substitute should consider:

- the adult's current known wishes, values, beliefs &/or instructions
- whether the adult's condition or well-being is likely to be improved by the proposed health, personal or financial intervention,
- whether the adult's condition or well-being is likely to improve without the proposed intervention,
- whether the benefit the adult is expected to obtain from the proposed intervention greater than the risk of harm, and
- whether a less restrictive or less intrusive form of intervention would be as beneficial as the proposed intervention

## How to use the Capability and Consent Tool

First determine the decision or need that is the focus of intervention and locate it on the first column (left side) of the chart.

Health Care	page 1	Facility Placement	page 11
Personal Care	page 4	Psychiatric Admission and Treatment	page 15
Financial	page 7		

The second column contains the hierarchy of decision makers for that particular decision and it always begins with the capable adult. Once the decision maker for a particular decision has been identified, follow the row to the right for specifics about the corresponding legislation, incapability criteria, indication of who is authorized or required to conduct assessments or to act as witnesses, and then to the last column for any limits or conditions to the authority.

An Advance Care Plan is the term used for any written or verbal expression of wishes made by a capable adult that guides decision makers and substitute decision makers in the event that the adult is incapable at the time the health care is required. It may or may not include a Representation Agreement, an Advance Directive or an Enduring Power of Attorney. See Health Care Providers' Guide to Consent to Health Care, Ministry of Health, BC for further information about advance care planning.

Generally, it is considered best practice to review or obtain a copy of any document that confirms the authority of a substitute decision maker within the scope of the relevant legislation. All documents must be kept in a secure and confidential manner.

DECISION / NEED	HIERARCHY OF DECISION MAKERS	RELEVANT STATUTE	INCAPABILITY CRITERIA	INCAPABILITY ASSESSOR WITNESS	LIMITS / CONDITIONS
<p><b>HEALTH CARE</b></p> <p>Anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other purpose related to health and includes:</p> <ul style="list-style-type: none"> <li>• a series or sequence of similar treatments or care administered to an adult over a period of time for a particular health problem.</li> <li>• a plan for minor health care that is               <ol style="list-style-type: none"> <li>I. developed by one or more health care providers</li> <li>II. deals with current and expected health problems</li> <li>III. expires in no longer than 12 months</li> </ol> </li> </ul>	<p><b>Capable Adult</b></p>	<p>Health Care (Consent) and Care Facility (Admission ) Act (HCCCFAA)</p>	<p>The adult demonstrates an understanding of the proposed treatment, the risks and benefits, the condition for which it is proposed and alternatives and that it applies to their own situation.</p> <p>Adults are presumed to be capable unless a Committee of Person has been appointed by a Court (see below).</p>	<p>Prescribed Health Care Provider (PHCP) includes Health Professions Act, Hearing Aid Act, Podiatrists Act and Social Workers Act.</p>	<p>Consent must be voluntary, not be obtained by fraud or misrepresentation, and be related specifically to the proposed health care. Only if the HCP determines that the adult is incapable of consenting to the proposed health care treatment does the HCP seek substitute consent in accordance to the hierarchy of decision makers below.</p>
<p><b>Major Health Care</b></p> <ol style="list-style-type: none"> <li>a) major surgery</li> <li>b) any treatment involving general anesthetic</li> <li>c) major diagnostic/investigative procedures or</li> <li>d) any health care designated by regulation as major health including radiation therapy, IV chemotherapy, kidney dialysis, ECT, laser surgery</li> </ol> <p><b>Minor Health Care</b></p> <p>Health care that is not major healthcare and includes:</p> <ol style="list-style-type: none"> <li>a) routine tests to determine if health care is necessary, and</li> <li>b) routine dental that prevents or treats a condition/injury cause (including cavity fillings and extractions)</li> </ol> <p><b>Emergency Health Care</b></p> <p>It is necessary to provide the health care without delay in order to preserve the adult's life, to prevent serious physical or mental harm or to alleviate severe pain.</p>	<p><b>Committee of Person</b></p> <p>Person appointed by the court to make decisions regarding an adult's personal care and health care.</p>	<p>Patients Property Act (PPA)</p>	<p>An adult who is declared by a judge to be incapable of managing themselves.</p>	<p>Involves an application to Court with two assessments of incapability by Physicians. Physicians are encouraged to follow best practice and consider if the adult is incapable of understanding of the following:</p> <ol style="list-style-type: none"> <li>a) personal/health care that is needed</li> <li>b) proposal made to provide the needed care</li> <li>c) reasons for that proposal, the risks and benefits of not receiving the care</li> <li>d) that this applies to their own situation</li> </ol> <p>Or, be incapable of implementing their personal care decisions.</p>	<p>A Committee of Person may consent or refuse to consent to health care necessary to preserve life. The Court may set limits on the Committee.</p> <p>Where there is a Committee of Person, the HCP must obtain consent from the Committee. A Committee of Person cannot override Mental Health Act Involuntary treatment.</p> <p>N.B. No one can consent to non-therapeutic sterilization of a person who cannot make that decision themselves.</p>

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HEALTH CARE CONTINUED...	<p><b>Representation Agreement, Non-Standard, Section 9</b>            Person authorized by a capable adult by a Section 9 Representation Agreement to make health care decisions on behalf of the adult if the adult becomes incapable of those decisions independently.</p>	Representation Agreement Act (Section 9)	Adult may make a non-standard Representation Agreement if the adult understands the nature and consequences of the proposed Agreement.	<p>Agreements must be in writing and signed by the adult, each Representative or alternate and 2 witnesses. Witnesses should object to the making of a Representation Agreement when there are: concerns around the adult's capability, coercion, abuse and neglect by the Representative, inconsistency in content of Agreement with current wishes or errors in the Agreement. In these situations the witness should not witness the Agreement and report concerns to the PGT. The following persons must not act as a witness:</p> <ul style="list-style-type: none"> <li>• a person named as a Representative</li> <li>• a spouse, child or parent of a person named as a Representative</li> <li>• an employee or agent of a Representative</li> <li>• a person who is not an adult (aged 19 or above);</li> <li>• a person who does not understand the type of communication used by the adult, unless the person receives interpretive assistance to understand that type of communication</li> </ul>	<p>A Representation Agreement is effective on the date it is executed/signed unless there is a specified triggering condition such as a physician's opinion of incapability, which must have happened in a way set out in the Agreement.</p> <p>Representative s must:</p> <ul style="list-style-type: none"> <li>• consult with the adult if possible</li> <li>• comply with the adult's current wishes if reasonable</li> <li>• comply with the previously capable expressed wishes or any known Advance Directive</li> <li>• only when the above is unknown, act in the adult's best interests on the basis of their known values and beliefs</li> </ul> <p>A paid personal or health care provider of the adult may not be named as a Representative.</p> <p>A Representative under Section 9 may give or refuse consent to health care necessary to preserve life.</p>
	<p><b>Representation Agreement, Standard, Section 7</b>            Person authorized by the adult by a Section 7 Representation Agreement to make health care decisions on behalf of the adult.</p>	Representation Agreement Act Standard (Section 7)	Adult may make a standard Representation Agreement even though incapable of making a contract, or managing financial, personal, health affairs. Factors considered include desire to have a Representative , ability to demonstrate choices, preference and feelings of approval/disapproval, awareness of impact of making the Agreement, relationship characterized by trust.	Agreement must be in writing and signed by the adult, each Representative or alternate and 2 witnesses. Witnesses should object to the making of a Representation Agreement when there re: concerns around the adult's capability, coercion, abuse and neglect by the Representative, inconsistency in content of Agreement with current wishes, or errors in the Agreement. In these situations the witness should not witness the Agreement and report concerns to the PGT.	All the limits and conditions of a Non-Standard, Section 9 applies as above with the exception of: Standard Representatives cannot make a decision to refuse life-supporting care or treatment.

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HEALTH CARE CONTINUED...	<p><b>Advance Directive (AD)</b></p> <p>A written instruction made by a capable adult that:</p> <p>a) gives or refuses consent to health care for the adult in the event that the adult is not capable of giving the instruction at the time the health care is required.</p>	Health Care (Consent) and Care Facility (Admission) Act, Part 2.1	An adult is incapable to make an Advance Directive if the adult is incapable of understanding the nature and consequences of the proposed Advance Directive, the scope and effect of the health care instructions set out in the Advance Directive, and that a SDM will not be consulted on the instruction.	<p>Must be signed by the adult, and witnessed by 2 other adults. The following persons must not act as a witness to the signing of an Advance Directive:</p> <p>a) a person who provides personal care, health care or financial services to the adult for compensation, or their spouse, child, parent, or employee</p> <p>b) a person who does not understand the type of communication used by the adult</p>	<p>An AD does not apply when:</p> <p>a) the instructions in an adult's Advance Directive do not address the health care decision to be made,</p> <p>b) the instructions in an adult's Advance Directive are so unclear that it cannot be determined whether the adult has given or refused consent to the health care,</p> <p>c) since the Advance Directive was made and while the adult was capable, the adult's wishes, values or beliefs in relation to a health care decision significantly changed, and the change is not reflected in the Advance Directive, or</p> <p>d) since the Advance Directive was made, there have been significant changes in medical knowledge, practice or technology that might substantially benefit the adult in relation to health care for which the adult has given or refused consent in an Advance Directive</p>
	<p><b>Temporary Substitute Decision Maker (TSDM)</b></p> <p><b>Chosen by the Health Care Provider according to the following hierarchy:</b></p> <p>Adult's Spouse;            Adult's Child;            Adult's Parent;            Adult's brother or sister;            Adult's Grandparent;            Adult's Grandchild;            Anyone else related by birth or adoption;            Close friend of the adult;            Person immediately related by marriage;            PGT, may appoint, including themselves</p>	Health Care (Consent) and Care Facility (Admission) Act	Prior to seeking substitute consent, the HCP must assess whether the adult demonstrates an understanding of the proposed treatment and alternatives, the risks and benefits, the condition for which it is proposed, and that it applies to their own situation. HCP must also make reasonable effort to find out if there is any Committee of Person or Representative.	Prescribed Health Care Provider (PHCP) includes those guided by the Health Professions Act, Hearing Aid Act, Podiatrists Act, & Social Workers Act. The PCHP who is providing the care or treatment would be responsible for assessing consent capability. For example the surgeon would assess the patient's ability to consent to surgery.	<p>TSDM must:</p> <ul style="list-style-type: none"> <li>• be at least 19 years old</li> <li>• had contact with the adult in the preceding 12 months</li> <li>• have no dispute with the adult</li> <li>• be capable of giving consent</li> <li>• consult with the adult</li> <li>• if there is dispute about who is to be chosen as TSDM, the HCP must choose a person authorized by the PGT</li> </ul>

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<b>HEALTH CARE CONTINUED...</b>	<b>Health Care Provider for Urgent or Emergency Health Care (exception to consent)</b>	Health Care (Consent) and Care Facility (Admission) Act, Section 12 (1) (a)...if it is necessary to provide the health care without delay in order to preserve the adult's life, to prevent serious physical or mental harm or to alleviate severe pain.	A health care provider may provide urgent/emergent health care to an adult without the adult's consent if: The adult is apparently impaired by drugs or alcohol or is unconscious or semi-conscious for any reason or is, in the health care provider's opinion, otherwise incapable of giving or refusing consent, and it is not contrary to the known previously expressed wishes of the adult.	Prescribed Health Care Provider (PHCP) includes Health Professions Act, Hearing Aid Act, Podiatrists Act and Social Workers Act. Where practicable, a second health care provider confirms the first health care provider's opinion about the need for the health care and the incapability.	If a Committee of Person, Representative, or a TSDM becomes available after treatment has been initiated, they may refuse consent for continued health care, and the health care must be withdrawn. Should an Advance Directive become known after a treatment has been initiated that refuses consent to that particular treatment, the healthcare provider is required to terminate the treatment.
	<b>Designated Agency</b>  5 Regional Health Authorities, Providence Health Care, Community Living BC.	Adult Guardianship Act (Part 3) (Abuse and Neglect Provisions) <ul style="list-style-type: none"> <li>• Support and Assistance Plan/Order (Sections 53-56);</li> <li>• Emergency Assistance (Section 59)</li> </ul>	An adult is abused or neglected and unable to seek support or assistance because of physical restraint, physical handicap or a condition that affects their ability to make decisions about abuse and neglect and requires treatment.	Designated Responder from Designated Agency.	The authority of the designated agency does not override the rights of capable adults who may chose to live at risk and in abusive or neglectful situations. If health care is proposed in the support and assistance plan, the designated agency must ensure compliance with the Health Care (Consent) and Care Facility (Admission) Act.
<b>PERSONAL CARE</b>  Includes matters respecting: <ol style="list-style-type: none"> <li>a) shelter, employment, diet, dress</li> <li>b) participation in social, educational, vocational and other activities</li> <li>c) contact or association with other persons</li> <li>d) licenses, permits, approvals or other authorizations</li> </ol>	<b>Capable Adult</b>		Adults are presumed capable.  The adult demonstrates an understanding of personal care that is needed, the proposal to provide the needed care, the risks and benefits of not receiving the care and that it applies to their own situation.	Health Care Provider may assess the adult and provide an opinion about incapability to make personal care decisions, however there is currently no legislation that establishes incapability criteria specifically for personal care.	Consent must be voluntary, not be obtained by fraud or misrepresentation and be related specifically to the proposed personal care. Only if the HCP determines that the adult is incapable of consenting to the proposed personal care does the HCP seek substitute consent in accordance to the hierarchy of decision makers below.

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<b>PERSONAL CARE CONTINUED...</b>	<p><b>Committee of Person</b></p> <p>Person appointed by the court to make decisions regarding an adult's personal care and health care.</p>	Patients Property Act (PPA)	An adult who is declared by a judge to be incapable of managing himself or herself.	<p>Involves an application to court with two assessments of incapability by physicians. Physicians are encouraged to follow Best Practice Criteria as follows:</p> <p>The adult is incapable of understanding of the following:</p> <ol style="list-style-type: none"> <li>personal care that is needed</li> <li>proposal made to provide the needed care</li> <li>reasons for that proposal, the risks and benefits of not receiving the care</li> <li>that this applies to their own situation</li> </ol> <p>Or, be incapable of implementing his/her personal care decisions.</p>	<p>Committee of Person may authorize restraints and consent to care facility admission and restrict the adult's access to others.</p> <p>If a Committee of Person has been appointed by the Court, the HCP must obtain consent from the Committee.</p>
	<p><b>Representation Agreement, Non-Standard, Section 9</b></p> <p>Person authorized by a capable adult by a Section 9 Representation Agreement to make health care decisions on behalf of the adult if the adult becomes incapable of those decisions independently.</p>	Representation Agreement Act (Section 9)	Adult may make a non-standard Representation Agreement if the adult understands the nature and consequences of the proposed agreement.	<p>Representation Agreements must be in writing and signed by the adult, each Representative or alternate and 2 witnesses. Only 1 witness is required if that witness is a lawyer or a notary public. Witnesses should object to the making of a Representation Agreement when there are:</p> <p>Concerns around the adult's capability, coercion, abuse and neglect by the Representative, inconsistency in content of Agreement with current wishes, or errors in the Agreement. In these situations the witness should not witness the Agreement and report concerns to the PGT.</p>	<p>A Representation Agreement is effective on the date it is executed/signed unless there is a specified triggering condition such as a physician's opinion of incapability, which must have happened in a way set out in the Agreement.</p> <p>Representative's must:</p> <ul style="list-style-type: none"> <li>consult with the adult if possible</li> <li>comply with the adult's current wishes if reasonable</li> <li>comply with the previously capable expressed wishes or any known Advance Directive</li> <li>only when the above is unknown, act in the adult's best interests on the basis of their known values and beliefs</li> </ul> <p>A paid personal or health care provider of the adult may not be named as a Representative.</p> <p>A Representative must not make a will for the adult.</p>

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<p><b>PERSONAL CARE CONTINUED...</b></p>	<p><b>Representation Agreement, Standard, Section 7</b></p> <p>Person authorized by an adult by a Section 7 Representation Agreement to make personal care decisions on behalf of the adult.</p>	<p>Representation Agreement Act (Section 7)</p>	<p>Adult may make a Representation Agreement even though incapable of: making a contract, managing financial, personal, health affairs. Factors considered: desire to have a Representative, ability to demonstrate choices, preference and feelings of approval/disapproval, awareness of impact of making the Agreement, relationship characterized by trust.</p>	<p>Agreement must be in writing and signed by the adult, each Representative or alternate and 2 witnesses. Witnesses should object to the making of a Representation Agreement when there are: concerns around the adult's capability, coercion, abuse and neglect by the Representative, inconsistency in content of Agreement with current wishes, or errors in the Agreement. In these situations the witness should not witness the Agreement and report concerns to the PGT.</p>	<p>A Representation Agreement becomes effective on the date that it is executed/signed unless there is a specific triggering condition, such as a physician's opinion of incapability that must have happened in a way set out in the Agreement. Representative's must:</p> <ul style="list-style-type: none"> <li>• consult with the adult if possible</li> <li>• comply with the adult's current wishes if reasonable</li> <li>• comply with the previously capable expressed wishes or any known Advance Directive</li> <li>• only when the above is unknown, act in the adult's best interests on the basis of their known values and beliefs</li> </ul> <p>A paid personal or health care provider of the adult may not be named as a Representative.</p> <p>A Representative must not make a will for the adult.</p>
	<p><b>Designated Agency</b></p> <p>5 Regional Health Authorities</p> <p>Providence Health Care Community Living BC.</p>	<p>Adult Guardianship Act (Part 3) (Abuse and Neglect Provisions)</p> <ul style="list-style-type: none"> <li>• Support and Assistance Plan/Order (Sections 53-56)</li> <li>• Emergency Provisions (Section 59)</li> </ul>	<p>An adult is abused or neglected and unable to seek support or assistance because of physical restraint, physical handicap or a condition that affects their ability to make decisions about abuse and neglect and it is necessary to provide personal care.</p>	<p>Designated Responder from Designated Agency.</p>	<p>The authority of the designated agency does not override the rights of capable adult who may chose to live at risk and in abusive situations.</p>

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<p><b>FINANCIAL</b></p> <p>Includes an adult's business and property and the conduct of the adult's legal affairs.</p>	<p><b>Capable Adult</b></p>		<p>Adult presumed to be capable of making decisions about their financial affairs and understanding the nature and consequences of those decisions.</p>		<p>Consent must be voluntary, not be obtained by fraud or misrepresentation. Only if there are concerns that an adult is incapable of making the proposed financial decision will one seek alternatives in accordance to the hierarchy of decision makers below.</p>
	<p><b>Committee of Estate by Court Order</b></p> <p>Person appointed by the court to make decisions regarding an adult's financial affairs.</p>	<p>Patients Property Act</p>	<p>An adult who is declared by a judge to be incapable of managing his or her affairs.</p>	<p>Requires assessment of incapability by 2 physicians. Physicians are encouraged to utilize the following best practice criteria. Assess whether the adult demonstrates an understanding of the following: the nature of the adult's financial affairs, including the value of adult's business and property, the obligations owed to the adult's legal dependants, the decisions or actions respecting the adult's financial affairs which must be taken, that this refers to the adult, or that the adult is incapable of implementing his/her financial decisions.</p>	<p>Committee of Estate cannot make a will on behalf of the adult but can facilitate the making of a will if the adult has testamentary capacity. Committee of Estate cannot delegate guardianship authority.</p>

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<p><b>FINANCIAL CONTINUED...</b></p>	<p><b>Statutory Property Guardian (SPG)/ Committee of Estate by Certificate of Incapability (CoI)</b></p> <p>Public Guardian and Trustee (PGT) of British Columbia becomes Committee of Estate (COE) through the Statutory Property Guardianship (SPG) process.</p>	<p>Adult Guardianship Act, Part 2.1 Statutory Property Guardians</p>	<p>An adult is incapable of managing the adult's financial affairs if the QHCP has determined that any of the following apply:</p> <ol style="list-style-type: none"> <li>cannot understand the nature of their financial affairs, including value of business and property and obligations to dependents</li> <li>cannot understand the decisions that must be made or actions taken for reasonable management of financial affairs</li> <li>cannot understand risks/benefits of action or failing to take action for financial affairs</li> <li>cannot understand that this information applies to the adult</li> <li>cannot demonstrate ability to implement or direct others</li> </ol> <p>An incapability assessment must include a medical component completed by a medical practitioner and a functional component completed by a QHCP.</p>	<p>Qualified Health Care Providers (QHCP) may conduct assessments if they are licensed or registered under one of the following:</p> <ol style="list-style-type: none"> <li>Physician</li> <li>Registered Social Worker</li> <li>Registered Nurse</li> <li>Registered Psychiatric Nurse</li> <li>Registered Occupational Therapist</li> <li>Registered Psychologist</li> </ol> <p>Health Authority Designates (HAD) may issue a COI if the following criteria are met:</p> <ol style="list-style-type: none"> <li>the adult needs to make decisions about their financial affairs</li> <li>the adult is incapable of making those decisions</li> <li>the adult needs, and will benefit from, the assistance and protection of the PGT as Statutory Property Guardian (Committee of Estate)</li> <li>the needs of the adult would not be sufficiently met by alternative means of assistance, and either: <ol style="list-style-type: none"> <li>the adult has not granted an Enduring Power of Attorney, or</li> <li>If there is an attorney they have not been complying with their duties under the Power of Attorney Act</li> </ol> </li> </ol> <p>Health Authority Designates (HAD) may issue a COI if notice of intention and reasons have been given to the adult and near relative.</p>	<p>Only the Public Guardian and Trustee of BC may become Statutory Property Guardian. A Statutory Property Guardian is only authorized to make financial, business, and property decisions for the adult and to conduct their legal affairs.</p>

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<b>FINANCIAL CONTINUED...</b>	<p><b>Enduring Power of Attorney (EPOA)</b></p> <p>Attorney has the authority to make financial decisions. The authority continues to have effect or comes into effect when the adult is incapable.</p>	<p>Power of Attorney Act – Part 2</p>	<p>Adults are presumed capable unless they are incapable of understanding the nature and consequences of the proposed enduring power of attorney and are incapable of understanding all of the following:</p> <ul style="list-style-type: none"> <li>a) the property the adult has and its approximate value</li> <li>b) the obligations the adult owes to his or her owes to his or her dependants</li> <li>c) that the adult's attorney will be able to do on the adult's behalf anything in respect of the adult's financial affairs that the adult could do if capable, except make a will, subject to the conditions and restrictions set out in the enduring power of attorney</li> <li>d) that, unless the attorney manages the adult's business and property prudently, their value may decline</li> <li>e) that the attorney might misuse the attorney's authority</li> <li>f) that the adult may, if capable, revoke the enduring power of attorney</li> </ul>	<p>Signed by the donor and by two witnesses or one witness if that witness is a lawyer or notary. The spouse, child or parent of the named attorney may not be a witness.</p> <p>If the adult specifies that the enduring power of attorney is effective when the adult is incapable, and the person named to confirm the adult's incapability is incapable, unwilling or unable to act, a qualified health care provider may confirm whether the adult is incapable.</p>	<p>EPOA may make decisions in relation to financial/legal affairs only and ends if is terminated by the capable adult or if there is a Committee of Estate named either by Court order or Certificate. The EPOA may have conditions or restrictions written into the Agreement.</p> <p>An EPOA is effective on the latest of:</p> <ul style="list-style-type: none"> <li>a) the date signed</li> <li>b) a date stated as its effective date</li> <li>c) the date an event described as bringing the POA into effect is confirmed</li> </ul> <p>A person who provides personal or health care services or an employee of a facility where the adult resides and receives personal or health care services may not be an EPOA unless they are a child/parent/spouse.</p> <p>An attorney must not make or change a will and must follow the duties of an attorney. In Sec. 19, e.g. give priority to meeting adult's personal/health care needs, foster independence.</p>
	<p><b>Power of Attorney (General)</b></p> <p>Attorney has the authority to make financial/legal decisions. There is no enduring clause; the authority ends if an adult is no longer capable of directing their affairs.</p>	<p>Power of Attorney Act (Part 1)</p>	<p>Adults are presumed to be capable of:</p> <ul style="list-style-type: none"> <li>a) making decisions about the adult's financial affairs, and</li> <li>b) understanding the nature and consequences of making, changing or revoking an enduring power of attorney</li> </ul> <p>An adult's way of communicating with others is not grounds for deciding that the adult is incapable.</p>	<p>Signed by the donor and by two witnesses or one witness if that witness is a lawyer or notary. The spouse, child or parent of the named attorney may not be a witness.</p>	<p>The POA may have conditions or restrictions written into the Agreement, for example, may be a general POA, specific banking POA, Land Title POA, etc.</p>

DECISION / NEED	HIERARCHY OF DECISION MAKERS	RELEVANT STATUTE	INCAPABILITY CRITERIA	INCAPABILITY ASSESSOR WITNESS	LIMITS / CONDITIONS
<b>FINANCIAL CONTINUED...</b>	<p><b>Representation Agreement, Standard, Section 7</b></p> <p>Person authorized by a Section 7 Representation Agreement to make routine financial decisions on behalf of another.</p>	Representation Agreement Act Section 7	Adult may make a Representation Agreement even though incapable of: making a contract, managing financial, personal, health affairs. Factors considered: desire to have a Representative, ability to demonstrate choices, preference and feelings of approval/disapproval, awareness of impact of making the Agreement, relationship characterized by trust.	<p>Agreement must be in writing and signed by the adult and each Representative or alternate. Adult's signature must be witnessed by 2 capable adult witnesses.</p> <p>Witness cannot be anyone named in the Agreement, or the spouse, child or parent of anyone named in the Agreement. Witnesses should object to the making of a Representation Agreement when there are: concerns around the adult's capability, coercion, abuse/neglect by the Representative, inconsistency in content of Agreement with current wishes, or errors in the Agreement. In these situations the witness should not witness the Agreement and report concerns to the PGT.</p>	<p>Representation Agreements which include the authorization to manage routine finances must name a monitor unless: the Representative is the spouse of the adult; or two or more Representatives have been named to act together or, the Representative is the PGT, a trust company or a credit union. A Representation Agreement may have a triggering condition, such as incapability, that must have happened in a way set out in the Agreement or a physician's opinion.</p> <p>Representative s must: comply with the expressed wishes of adult while capable; consult with the adult; not make a will.</p> <p>Routine financial management includes paying bills, managing pension income, purchasing food/services, making investments. It does not include selling assets or businesses.</p>
	<b>Pension Trusteeship</b>	Federal Income Security Programs (ISP)	Need to demonstrate/describe how the adult is unable to manage ISP funds and may be incapable.	ISP Certificate of Incapability Form can be signed by physician, lawyer, or a member of the clergy, and, as per organizational protocol, by RN, NP, Psychologist, or SW.	<p>Trustee can manage OAS/GIS/ CPP only. Does not give authority to manage other income or assets. For example, it does not give access to bank accounts/savings.</p> <p>The Bloom Group is an agency that offers Pension Trusteeship Services, along with other social services.</p>

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<b>FINANCIAL CONTINUED...</b>	<p><b>Designated Agency</b></p> <p>5 Regional Health Authorities, Providence Health Care, Community Living BC</p>	<p>Adult Guardianship Act (Part 3)</p> <ul style="list-style-type: none"> <li>• Support and Assistance Plan (Section 54)</li> <li>• Emergency Provisions (Section 59)</li> </ul>	<p>An Adult is abused or neglected and unable to seek support or assistance because of physical restraint, physical handicap, or a condition that affects their ability to make decisions about abuse and neglect; and, it is necessary to act to protect the adult's income or assets.</p>	<p>Designated Responder from Designated Agency.</p>	<p>The authority of the designated agency does not override the rights of capable adults who can choose to live at risk and in abusive situations. The Court may order a support and assistance plan including a provision for a specified period of up to 1 year of available services to ensure that the adult's financial affairs, business or assets are properly managed and protected, including any services that may be offered by the PGT.</p> <p>Additionally, the court may order a person found to have abused an adult to pay for or contribute towards the adult's maintenance or services.</p> <p>In an emergency situation, the designated agency may make a report to the PGT to protect the adult's assets from significant damage or loss.</p>
<b>FACILITY PLACEMENT</b>	<b>Capable Adult</b>	Health Care (Consent) and Care Facility (Admission) Act	<p>Adults are presumed capable of giving or refusing consent to admission to or continued residence in a care facility. Adults must have the information that a reasonable person would require to understand that they will be admitted to a care facility including information about the care they will receive, the services available and the circumstances under which they may leave the facility.</p> <p>A determination of incapability must be based on:</p> <ol style="list-style-type: none"> <li>a) an assessment made in accordance with the regulations, and</li> <li>b) whether or not the adult demonstrates that he or she understands the information given by the manager</li> </ol>	<p>An assessor of incapability must be either a physician or a member of the following class of prescribed, registered health care providers: Nurse (NP, RN &amp; RPN), Social Worker, Occupational Therapist, or Psychologist.</p>	<p>Consent must be voluntary, not be obtained by fraud or misrepresentation, and be related specifically to facility placement. Only if the assessor determines that the adult is incapable of consenting does the HCP seek substitute consent in accordance to the hierarchy of decision makers below.</p>

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<b>FACILITY PLACEMENT CONTINUED...</b>	<b>Committee of Person</b> Person appointed by the court to make decisions regarding an adult's personal care and health care.	Patients Property Act	An adult who is declared by a judge to be incapable of managing himself or herself.	Involves an application to court with two assessments of incapability by physicians.	If the Court has appointed a Committee of Person, the manager must obtain consent for facility care from that Committee.
	<b>Representation Agreement, Non-Standard, Section 9</b>  Person authorized by a capable adult by a Section 9 Representation Agreement to make health care decisions on behalf of the adult if the adult becomes incapable of those decisions independently.	Representation Agreement Act	Adult may make a non-standard Representation Agreement if the adult understands the nature of the authority and the effect of giving it to the Representative.	Agreement must be in writing and signed by the Adult, each Representative or alternate and 2 witnesses. If the lawyer, who signed the consultation certificate, is the witness, only 1 witness is required.  Witnesses should object to the making of a Representation Agreement when there are: concerns around the adult's capability, coercion, abuse and neglect by the Representative, inconsistency in content of Agreement with current wishes, or errors in the Agreement. In these situations the witness should not sign as witness to the Agreement and should report concerns to the PGT.	A Representation Agreement is effective on the date it is executed/signed unless there is a specified triggering condition, such as incapability that must have happened in a way set out in the Agreement or a physician's opinion. Representative s must: comply with the expressed wishes of adult while capable; consult with the adult.

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<b>FACILITY PLACEMENT CONTINUED...</b>	<b>Substitute Decision Makers:</b> <b>The adult's spouse;</b> <b>The adult's child;</b> <b>The adult's parent;</b> <b>The adult's brother or sister;</b> <b>The adult's grandparent;</b> <b>The adult's grandchild;</b> <b>Anyone else related by birth or adoption to the adult;</b> <b>A close friend of the adult;</b> <b>A person immediately related to the adult by marriage;</b> <b>PGT may appoint, including themselves</b>	Health Care (Consent) and Care Facility (Admission) Act	<p>Adults are assumed capable of giving or refusing consent to admission to or continued residence in a care facility. Adults must have the information that a reasonable person would require to understand that they will be admitted to a care facility including information about the care they will receive, the services available and the circumstances under which they may leave the facility.</p> <p>A determination of incapability must be based on:</p> <ol style="list-style-type: none"> <li>an assessment made in accordance with the regulations, and</li> <li>whether or not the adult demonstrates that he or she understands the information given by the manager</li> </ol> <p>The assessment will include determining if the adult is able to understand, reason, and appreciate the information provided, and the consequences of the decision.</p>	An assessor of incapability must be either a physician or a member of the following class of prescribed, registered health care providers: Nurse (NP, RN & RPN), Social Worker, Occupational Therapist, or Psychologist.	To qualify to give or refuse substitute consent to an adult's admission to a care facility, a person must: <ol style="list-style-type: none"> <li>be at least 19 years of age</li> <li>have been in contact with the adult during the preceding 12 months</li> <li>have no dispute with the adult</li> <li>be capable of giving or refusing substitute consent, and</li> <li>be willing to comply with the duties set out in Section 23, e.g. acting in the adult's best interests, considering adult's current wishes, pre-expressed wishes/values/beliefs, benefits of facility admission, and less restrictive options</li> </ol>
	<b>Manager of Licensed Care Facility</b>	Health Care (Consent) and Care Facility (Admission) Act (Sec. 24)	<p>In an emergency, an adult who is determined to be incapable under section 26 may be admitted without consent to:</p> <ul style="list-style-type: none"> <li>Preserve the adult's life</li> <li>Prevent serious physical or mental harm to the adult, or</li> <li>Prevent serious physical harm to any person</li> </ul>	An assessor of incapability must be either a physician or a member of the following class of prescribed, registered health care providers: Nurse (NP, RN & RPN), Social Worker, Occupational Therapist, or Psychologist.	Substitute consent will need to be obtained within 72 hours of admission.

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FACILITY PLACEMENT CONTINUED...	<p><b>5 Regional Health Authorities, Providence Health Care, Community Living BC</b></p>	<p>Adult Guardianship Act (Part 3) Emergency Provisions (Section 59) Support and Assistance Order (Section 54)</p>	<p>An adult is abused or neglected and unable to seek support or assistance because of physical restraint, physical handicap or a condition that affects their ability to make decisions about abuse and neglect and it is necessary to provide move the adult to safe place.</p>	<p>Designated Responder from Designated Agency</p>	<p>The authority of the designated agency does not override the rights of capable adults who may choose to live at risk/in abusive situations. In an emergency situation, a person from the designated agency may act to protect the adult (AGA Sec. 59). Admission to a care facility without substitute consent may occur if the adult is apparently incapable of giving or refusing consent and immediate admission of the adult is necessary to preserve the adult's life, prevent serious physical or mental harm to the adult or serious physical harm to any person. Substitute consent will need to be obtained within 72 hours of admission. A Support and Assistance Court Order may require admission to a care facility in which case substitute consent is not necessary.</p>
	<p><b>Director of Designated Psychiatric Facility</b></p>	<p>Mental Health Act, Leave, (Section 37) (Type of leave for an involuntary patient from a designated psychiatric facility)</p>	<p>Criteria for involuntary admission to a Designated Psychiatric Facility (Section 22): Adult has a mental disorder that seriously impairs the adult's ability to react appropriately to his or her environment or to associate with others; Adult requires psychiatric treatment in or through a designated facility; Adult requires care, supervision and control through a designated facility to prevent the adult's substantial mental or physical deterioration OR for the protection of the adult or the protection of others. Adult cannot be suitably admitted as a voluntary patient.</p>	<p>Director of a designated facility is the person responsible for the operation of a facility designated as a provincial mental health facility, psychiatric unit, or observation unit.</p> <p>The adult must also provide valid consent if capable, or be assessed as incapable to give/refuse consent per the standard process under the HCCACFAA and substitute consent must be obtained.</p>	<p>Admission to a licensed care facility under the Extended Leave provisions of the MHA requires valid consent from the adult, if capable, or the adult's substitute, under HCCCFAA.</p> <p>Involuntary status needs to be renewed in 1 month, then 3 months and finally for 6 months at a time, if the adult continues to meet the criteria for involuntary admission under Mental Health Act.</p>





**Created by ReAct Adult Protection Program for  
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