

Seniors and the Law: A Resource Guide Third Edition

by the
Alberta Civil Liberties Research Centre

**Alberta Civil Liberties
Research Centre**

Mailing Address:
c/o Faculty of Law
University of Calgary
2500 University Drive N.W.
Calgary, Alberta T2N 1N4
(403) 220-2505
Fax (403) 284-0945

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Board of Directors of the Alberta Civil Liberties Research Centre

Edwin W. Webking, Chairperson; Janet Keeping, Treasurer; Doreen Barrie; Michael Greene; Michael Wylie; Alastair Lucas, and Jennifer Koshan.

Principal Researcher and Writer (Editions 1 and 2)

Anna S. Pellatt, B.A., LL.B, LL.M.

Updated by:

Cole Eslinger, B.A., LL.B., Third edition

Legal Editor

Linda McKay-Panos, B.Ed., J.D., LL.M., Executive Director.

Project Management

Stephanie Willisroft, B.A., Administrator.

Linda McKay-Panos, B.Ed., J.D., LL.M., Executive Director.

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Foreword

In 1988, the Centre released *Do Not Go Gently: Law, Liberty and Aging in Alberta*, by Cheryl Hass, Ted Helgeson and Lynne Hume. This study focused on the legal rights of elderly Albertans, with particular emphasis on those found unable to look after their own affairs, or those institutionalized in mental health facilities, hospitals or nursing homes. The approach was interdisciplinary: combining social sciences and law.

Since our study was first released, there have been significant developments in Alberta law that impact upon seniors. For example, personal directives, enduring powers of attorney and springing powers of attorney are now available. Further, legislation intended to protect persons in care and consumer protection legislation have been passed. Thus, although many of the concerns expressed in our original study about the demographics and social situations of seniors remain, there have been legal developments.

This current study (third edition) is intended to update the legal material in the first and second publications. It has a practical approach which we hope will make it accessible to seniors, their families, friends and caregivers.

Linda McKay-Panos
Executive Director
December, 2010

Chapter One: Introduction

This handbook provides information on a range of legal subjects of interest to seniors. By “seniors”, we mean people who are 65 years of age and older. It is written in "plain English" and is intended as a basic resource for seniors, their friends, relatives and advocates. The handbook is divided into sections by subject area. Each section begins with a brief introduction to the subject area covered and follows with a series of questions and answers. At the back you will find a glossary (see **bolded words**) and a list of the organizations and resources mentioned in this handbook that may be of further help to you.

I. Profile of Seniors

The senior population is one of the fastest growing population groups in Canada. Statistics Canada reports that, between 1981 and 2005, the number of Canadian seniors has increased from 2.4 to 4.2 million, constituting an increase from 9.6% to 13.1% of the total population.¹ Seniors in Alberta comprise a smaller proportion of the population—10.5 percent—than in other provinces. Statistics Canada also estimates that by 2036, the proportion of the population represented by seniors will nearly double to 24.5%.² Following is a brief overview of the characteristics of the senior population in Alberta and Canada drawn from Statistics Canada's report, *A Portrait of Seniors in Canada*:

- Seniors make up a relatively small proportion of the Aboriginal population in Canada. Only 4% of the total number of First Nations, Inuit and Métis people in Canada are 65 years of age and older.

¹ Statistics Canada, *A Portrait of Seniors in Canada*, 4th ed. (Ottawa: Minister of Industry, 2007) at 12.

²Ibid.

- The number of seniors 85 years of age and older has increased very rapidly over the last two decades. Between 1981 and 2005, the number of seniors in this age bracket has increased from .8% to 1.5%.
- Women make up a substantial portion of the senior population, and especially older age groups. In Canada, women represent 52% of seniors aged 65 to 69, and almost 75% of seniors aged 90 or older.
- A large proportion of Canadian seniors consists of immigrants. In 2001, 28.6% of seniors aged 65 to 74 and 28% of seniors aged 75 to 84 were immigrants. The majority of immigrants who are aged 65 or older arrived in Canada when they were young.
- The financial situation of seniors has improved over the last several decades. Between 1980 and 2003, the average net income of senior couples increased by 18%. Income levels, however, remain low among unattached seniors, and especially single senior women. The mid-1970s to the mid-1990s saw a steady decline in seniors participating in the workforce. However, between 1996 and 2006, there have been increases in senior labour force participation.
- 93% of seniors live in private households while the remaining 7% live in collective dwellings (primarily healthcare institutions such as nursing homes and hospitals), according to a 2001 census. The majority of people living in institutions are, in fact, seniors. Those seniors with severe disabilities and those in older age brackets are most likely to be receiving institutional care.

II. Profile of the Legal Issues Facing Seniors

When people think of the legal issues seniors must deal with they tend to think about the preparation of wills and estate planning. Though these matters are important to seniors, the changing circumstances of the senior population have recently brought other legal issues forward:

- The large increase in the number of seniors, and particularly the number of women over the age of 65, has made seniors more vulnerable to both age and sex discrimination—or a combination of the two—in relation to employment, the provision of services and landlord and tenant matters.
- The large number of single women seniors living in low-income situations raises poverty law issues.
- It is now well documented that all seniors are vulnerable to a range of abuse and exploitation.
- As seniors age, their health worsens and they require increasing contact with the medical system. Issues regarding the right to both choose and refuse treatment therefore frequently arise.
- The right of seniors to maintain their independence and privacy in institutional care is another pressing legal issue many seniors must deal with.
- Advances in medical care and technology have both increased life expectancy and made it necessary for people to plan for the time when they may no longer be capable of directing their personal and financial affairs. The preparation of advanced directives and enduring powers of attorney (legal documents

discussed in this book) can help seniors plan for the time when they may no longer be capable of handling their own affairs. The court's appointment of a guardian and a trustee may be necessary when seniors lack the **capacity** to handle most or all of their personal and financial affairs.

- Many senior immigrants are financially dependent on the relatives who originally sponsored and agreed to support them as a condition of their entrance into Canada. In some cases, sponsors are withdrawing their financial support and leaving seniors penniless.
- High divorce rates have meant that seniors have had to go to court to maintain access to their grandchildren.
- Lawyers report an increase in divorce and re-marriage rates among seniors.³

This handbook cannot address every legal issue of concern to seniors. It does, however, provide information on the legal rights and remedies available to seniors on:

- **elder abuse**,
- the right to refuse treatment,
- the provision of mental health care and services to seniors,
- the preparation of advanced directives and enduring powers of attorney as a means of planning for incompetence,
- **guardianship** and **trusteeship**, and
- consumer protection.

³A. Soden, "Elder law: a new practice area comes of age" in (May 1999) 8(3) *National* at 8, 33.

Chapter Two: Elder Abuse

I. Introduction

Elder abuse is any act or failure to act (“omission”) which causes physical, emotional or financial harm to an elderly person. It includes physical, sexual and psychological abuse, neglect (denying or failing to provide food and other basic necessities to an elderly person) as well as actions which result in the abuse or exploitation of an elderly person's financial resources.

The following are examples of **elder abuse**:

- pushing or punching,
- yelling at or making threats against an elderly person,
- taking and cashing pension checks without the permission of the elderly person concerned,
- selling an elderly person's property or possessions without his/her permission,
- deliberately over-medicating an elderly person and denying an elderly person the right to socialize with whom he/she chooses and make other key decisions for himself/herself.

Financial abuse is the most common form of **elder abuse**.

Though the abuse, neglect and exploitation of seniors are not new, it is now being recognized as a social issue. It is only over the past decade that people have begun to talk about **elder abuse** and governments

and social agencies have begun to study the problem and devise legal and social strategies to deal with it.

How big a problem is elder abuse?

Studies indicate that approximately 4 percent of the senior population has experienced some form of **elder abuse**.⁴

Are some seniors more likely to be abused than others?

Nearly all seniors are at risk of abuse no matter what their age, health status, socio-economic status or ethnicity. However, women living on their own, seniors in older age brackets and seniors who are seriously disabled appear to be more vulnerable to **elder abuse**.

Who is committing elder abuse?

Spouses and children of elderly people are most often the ones who abuse elderly people.⁵ Much **elder abuse** is, in fact, spousal abuse, and many abusers are themselves elderly. Other people who abuse the elderly include brothers and sisters, grandchildren, stepchildren, caregivers and others.

Why does elder abuse occur?

There are no simple answers to this question. There appear to be a number of contributing factors. Abuse generally occurs when there is an imbalance of power between the abuser and the person who is being abused. This difference in power may result from differences in age, financial status, health, fitness, size and strength. Often the person being abused lives with and is dependent upon the abuser for

⁴E. Podnieks, *Elder Abuse: It's Time We Did Something About It* (Ottawa: National Clearinghouse on Family Violence & Health and Welfare Canada, 1989) cited in V. Boyack, *Golden Years - Hidden Fears Elder Abuse - A Handbook for Front-line Helpers Working with Seniors* (Calgary: Kerby Centre, 1997) at 2.

⁵Office for the Prevention of Family Violence, *Elder Abuse and Neglect*, 1995 at 5.

care and financial support and is therefore, literally, at the abuser's mercy. In some cases it is the abuser who may be financially dependent upon the person being abused and may react to this situation by becoming abusive.⁶

Much **elder abuse** appears to be a continuation of long-standing cycles and patterns of violence within families. **Elder abuse** is often a continuation of wife abuse into older age. There are many circumstances where **elder abuse** occurs. In some cases, when the people who historically have been abusers in relationships become disabled, people who have been abused may retaliate by becoming abusive themselves.⁷ Children who have been abused by their parents when they were young may commit **elder abuse** because of learned patterns of family violence or as a means of getting back at those who have hurt them in the past.⁸

Stress and the overuse of alcohol and drugs have also been identified as factors contributing to the incidence of **elder abuse**.

What kinds of legal approaches to the problem of elder abuse are available?

The law offers a number of possible ways of responding to and dealing with the problem:

- making a complaint to the criminal justice system,
- reporting the abuse of elders in institutional care to government authorities,

⁶*Ibid.* at 6.

⁷*Ibid.*

⁸*Ibid.*

- applying for restraining orders and using other legal measures to keep the abuser away from the person he/she is abusing,
- suing the abuser to compensate seniors for damage to or loss of property as well as personal injuries sustained as a result of **elder abuse**,
- applying for a financial benefit under the *Victims of Crime Act*, and
- applying for protection orders under the *Protection Against Family Violence Act*.

II. Using the Criminal Justice System to Deal With Elder Abuse

Is elder abuse a crime?

Because **elder abuse** is committed primarily by children and spouses and other family members, many people think that it is a private, "family matter" and not a matter for criminal authorities to be concerned about. This is not true. In reality, many of the abusive acts committed against seniors (or any person) are crimes under the *Criminal Code* and are therefore a matter of public concern.

People who physically and sexually abuse seniors may be convicted of assault and/or sexual assault. A person responsible for providing an elderly person with food, shelter and other basic necessities who fails to do so and thus endangers the life of that person or permanently impairs his/her health may also be charged with a criminal offence.⁹ It is also a crime to harass or stalk an elderly person in a manner which causes him/her to fear for his/her safety or the safety of those close to

⁹See *Criminal Code* section 215(2)(b).

her/him.¹⁰ Threatening to kill or harm someone or threatening to damage or destroy his/her property or kill, poison or injure his/her pets or livestock is also a crime.¹¹

Many acts of financial abuse or exploitation of seniors are also crimes. People who take or use property or money belonging to a senior without his/her **consent** or obtain money or property by deceit can be convicted of theft or fraud.¹² Theft law even applies where the spouses are living together. Charges may also be brought against individuals holding powers of attorney for seniors or acting as trustees of property for the use or benefit of seniors if they abuse the powers they have been given and attempt to cheat seniors.¹³ Powers of attorney and trustees and guardians are discussed below in Chapter Three.

The following actions are also crimes under the *Criminal Code*:

- stealing and using a senior's credit card/ATM card,
- forging a senior's name on a cheque,
- using threats, accusations or violence to force a senior to sign over a pension cheque or other money or property or to do anything else he/she may not want to do,
- stealing mail addressed to a senior, and
- unlawfully confining a senior.

¹⁰See *Criminal Code* section 264(1).

¹¹See *Criminal Code* section 264.1.

¹²See *Criminal Code* section 322.

¹³*Criminal Code* sections 331 and 336.

What happens when elder abuse is reported to the police?

The police will normally investigate the report. If there are reasonable grounds to believe that a crime has been committed, charges will be laid. The matter will then likely go to court. If this happens, the senior involved in the case will probably be called to testify. This can be a difficult and traumatic process for many seniors. There are a number of organizations throughout the province that help prepare seniors to testify in court and support them through this process. The police can help you find an organization in your area which provides these services. If the abuser is found guilty of the offence, he/she will be sentenced. The sentence will depend upon a number of factors such as the severity and circumstances of the offence and whether the offender has a criminal record. It will also depend upon what the victim has to say. Victims of crimes can fill out and file a victim impact statement with the court indicating how they have been affected by the crime and the kind of sentence they feel is appropriate. Judges are required to consider the contents of victim impact statements when they sentence offenders. Various sentences may be imposed: imprisonment, a fine, a **suspended sentence**,¹⁴ the offender may be ordered to pay **restitution** to the victim or do community service, the offender may be given a conditional or **absolute discharge** or be ordered to serve a prison sentence part time or from time to time (for example, on weekends).

What advantages does the criminal justice system offer in dealing with elder abuse?

The criminal justice system can help to deal with **elder abuse** in a number of ways:

¹⁴ See the glossary for explanations of these different types of sentences.

It makes elder abuse a public rather than a private matter

Using the criminal justice system places the responsibility of dealing with **elder abuse** on the police and the court system rather than you and other private individuals involved in the matter. As well, when people are convicted of **elder abuse** and penalized for their crimes it sends a strong message that **elder abuse** is wrong and will not be tolerated.

When abusers are jailed seniors are protected

A sentence of **incarceration** takes the offender out of commission and thus provides protection for the victim for a period of time.

Criminal courts can order abusers to stay away from seniors

No-contact requirements or orders

The criminal justice system provides other means of trying to keep abusers away from the elderly. People accused of **elder abuse** may be ordered to stay away from and stop communicating with the people they have harmed as a condition of their release from custody. Police officers may make this a condition of releasing a person they have arrested with a warrant bail (this is called a **"no-contact" order**).¹⁵ If you think this condition should be imposed you should talk to the police officer in charge of the case when the arrest is made.

A **justice of the peace** (a person who presides over a **bail hearing**) can also order the accused not to have contact with a witness or anyone else involved in the case as a condition of releasing him/her from custody.¹⁶ If you want a **justice of the peace** to impose a **"no-contact"**

¹⁵*Criminal Code* section 499.

¹⁶*Criminal Code* section 515.

order as a condition for granting bail, you should talk to the prosecutor (government lawyer) in charge of the case. It is up to the prosecutor to convince the **justice of the peace** to impose this condition on the accused.

If the accused does not obey a "no-contact" requirement placed by a police officer or ordered by a **justice of the peace**, he/she may be detained in custody.¹⁷

After a person is found guilty, a "**no-contact**" **order** may also be imposed. A **no-contact order** is an option if the person is given a **conditional discharge** or a **suspended sentence** or if the court allows an offender to serve a sentence of imprisonment intermittently (for example, on weekends). If the "no-contact" requirement is imposed in these situations it becomes a condition on the offender's probation order. If the offender breaks the "no-contact" condition, he/she can be brought back to court and given a stiffer penalty for the original offence.¹⁸ She/he can also be charged with a new offence.¹⁹ If you feel that the court should make this kind of order part of the offender's sentence you should talk to the prosecutor before the sentence is ordered. Victims of crimes can also fill out and file a victim impact statement with the court indicating how they have been affected by the crime and the kind of sentence they feel is appropriate.²⁰

Peace Bonds

A **peace bond**²¹ is another way of trying to protect seniors from someone who is abusing him or her or threatening to abuse him or

¹⁷*Criminal Code* section 524.

¹⁸*Criminal Code* section 732.2(5).

¹⁹*Criminal Code* section 733.1.

²⁰*Criminal Code* section 722.

²¹*Criminal Code* section 810.

her. A **peace bond** is an order which requires a person to keep the peace and be of good behaviour. It can be obtained in cases where a person fears that another person will cause him/her physical harm, harm his/her spouse or children or damage his/her property. In addition to requiring the person named in the peace bond—the "defendant"—to keep the peace and be of good behaviour, the peace bond can require the defendant to stay away from and not contact the senior and also prohibit him/her from possessing firearms or other kinds of weapons.

In order to apply for a peace bond, the senior, or a person acting on the senior's behalf, must fill out a form known as an "information" explaining why a peace bond is needed. The information must then be presented to a **justice of the peace**. A hearing will then be scheduled to determine if a peace bond should be issued. The defendant must be served with notice of the hearing and can be present at the hearing. If the **justice of the peace** or judge decides that the abuser poses an immediate threat to the senior, he/she may issue a warrant for the immediate arrest and transport of the abuser to court for the peace bond hearing. If the **justice of the peace** or the judge decides at the hearing that there are reasonable grounds for the senior's fears, he/she will order the defendant to promise to keep the peace, to behave lawfully and to abide by any other conditions the **justice of the peace** or judge decides to impose. If the defendant refuses to sign the peace bond the **justice of the peace** or the judge can send him/her to jail. If he/she does not comply with any of the terms of the peace bond, he/she can be charged and convicted of an offence.²²

²²*Criminal Code* section 811.

There are a number of advantages to using a peace bond to restrain an abuser: there is no cost involved in applying for a peace bond, peace bonds can often be obtained quickly (sometimes within a day) and are generally in force for a period of one year.

However, peace bonds do have their limitations. They cannot be used to protect a senior who is experiencing emotional or financial abuse. Restraining orders can be used to combat these kinds of **elder abuse**. Peace bonds can sometimes take a long time to obtain. An ***ex parte* restraining order** and an **emergency protection order** under the *Family Violence Protection Act* can be obtained much more quickly. These options are discussed below.

In Edmonton, members of the **Elder Abuse** Intervention Team, a joint initiative of the Edmonton Police, Edmonton Community Services, Catholic Social Services, and the Victorian Order of Nurses, help elders obtain peace bonds. In Calgary, the Calgary Police Service's Seniors Coordinator and/or Domestic Violence Unit help seniors obtain peace bonds. In smaller urban centres and rural communities, resources of this kind are generally harder to find. In order to find out what help is available you can contact your local police department or R.C.M.P. detachment and ask if they have a program which provides this service or if they know of an organization that can help you.

Abusers can be required to make restitution

When a person is convicted of an offence or given a conditional or **absolute discharge**, the court can order the offender to make **restitution** to those he/she has harmed.²³ This means that the court can order the offender to pay for the loss of property or property damage resulting from the criminal act. It can also make the offender

²³*Criminal Code* section 738.

pay for financial losses suffered as a result of physical injuries he/she has caused—for example, loss of a victim's work time and wages. If an offender has caused or threatened to cause physical harm to a person, and has, as a consequence, forced the person to move out of his/her household, the offender may also be required to cover moving expenses, temporary housing costs as well as the cost of food, child care and transportation.

If you want the court to order the offender to make **restitution**, you should talk to the crown prosecutor and provide him/her with information documenting the financial losses caused by the **elder abuse** *before* the offender has been sentenced. An application for **restitution** must be made by the crown prosecutor at the time the offender is sentenced. You can also include this information in the victim impact statement which courts are required to consider when they sentence an offender.

What are the limitations of using the criminal justice system to deal with elder abuse?

The criminal justice system certainly cannot deal with the complexities of the problem nor the underlying factors which contribute to its occurrence. Criminal law is also primarily concerned with punishing unlawful behaviour rather than addressing the specific needs and concerns of victims of **elder abuse**. As well, some forms of **elder abuse**, such as emotional abuse, are not recognized as crimes and therefore cannot be dealt with by the criminal justice system. It also should be noted that peace bonds and no-contact orders are only effective if they are fully and properly enforced.

III. Using Restraining Orders and Protection Orders Under the Family Violence Protection Act to Protect Seniors

What is a restraining order?

A **restraining order** is an order of the civil court. It prohibits a person who has abused or threatened to abuse another person from having further contact with that person. Restraining orders are most often used to protect a person from a violent spouse but can also be used to protect a senior from abuse perpetrated by a child, family member or someone who is not related to the senior. If the person named in the **restraining order** does not comply with its terms he/she can be arrested and charged with an offence. Regular kinds of restraining orders can be obtained to deal with situations which are not emergencies as well as other kinds of **elder abuse**.

What is an ex parte restraining order?

In situations where there is an immediate threat of physical harm, a **restraining order** can be obtained without notifying the abuser and having the abuser present in court. These kinds of restraining orders are called **ex parte** restraining orders. An application for an **ex parte restraining order** must include an affidavit or questionnaire filled out by the person seeking the **restraining order** explaining the urgency of the situation. **Ex parte** restraining orders can be obtained very quickly. However, they can only be obtained during regular court hours. **Ex parte** restraining orders can be used to protect seniors from physical abuse in emergency situations.

How can seniors obtain restraining orders?

It is necessary to make an application to the Court of Queen's Bench to obtain a **restraining order**. Though it is possible to apply for a **restraining order** without a lawyer, it is advisable to have one.

The **Protection and Restraining Order Project (PROP)** in Edmonton and the **Court Preparation and Restraining Order Program** operated by Calgary Legal Guidance in Calgary help low income people obtain *ex parte* restraining orders quickly for a minimum cost. They do not help people obtain regular restraining orders. If you cannot afford a lawyer and you do not have access to these services you may be able to hire a lawyer with the assistance of Alberta's **Legal Aid** program. You can also apply to **Legal Aid** for a lawyer to help you obtain a regular **restraining order**. Your local **Legal Aid** office has detailed information about eligibility rules and application procedures.

Applications for **Legal Aid** must be made in person. The **Legal Aid** program will review your application to determine whether your case has merit and a likelihood of success or both, and whether you meet the program's financial guidelines. If you are eligible for **Legal Aid** the program will cover your legal costs. However, you may be required to repay the program. Applicants who are denied coverage are notified in writing of the reasons for the refusal and are entitled to **appeal** the decision to a Regional Committee. Each local **Legal Aid** office has a Regional Committee composed of lawyers and other community members. Decisions of Regional Committees can be appealed to the Northern/Southern Appeals Committee.

What is the purpose of the Protection Against Family Violence Act?

The purpose of the *Protection Against Family Violence Act* is to provide protection and assistance to victims of family violence. It enables victims of family violence to obtain special kinds of protection orders called **emergency protection orders** and *Queen's Bench protection orders* against the perpetrators of the violence.

The Act also enables the police to obtain a warrant to enter residences and other places in order to search for and assist individuals who may have been the victims of family violence. The Act defines family violence as sexual abuse and forced confinement as well as actions which cause property damage or injury or a reasonable fear of property damage or injury which are intended to harm a family member.²⁴ "Family violence" includes threatening to harm or injure another person or to damage his/her property.

The Act focuses on protecting victims of spousal abuse from this kind of violence. It covers violence between people who are or have been married to each other or who are residing together or have resided together in an intimate relationship. It also covers violence between persons who are the parents of one or more children, individuals who live together and are related to one or more persons in the household by blood, marriage or adoption and violence against children within the context of a family household.

What kinds of elder abuse does it cover?

The *Protection Against Family Violence Act* covers only certain kinds of **elder abuse**. It covers the forced confinement of a senior as well as physical and sexual abuse and actions which cause property damage or a reasonable fear of injury or property damage. The Act also covers violence perpetrated by a "family member." This includes violence committed in the context of an intimate relationship where the people involved are married or have been married to each other, live together or have lived together or have had children together. The Act also covers **elder abuse** committed by a member of a senior's family in situations where the abuser resides with the senior.

²⁴ *Protection Against Family Violence Act*, s. 1(1)(e).

What kinds of elder abuse does it NOT cover?

The *Protection Against Family Violence Act* does not cover financial abuse of seniors or emotional abuse. The Act does cover violence which occurs in the context of a same-sex relationship or between two people who are dating (in some situations). The Act does not cover **elder abuse** committed by individuals who are not related to the senior. Abuse committed by a caregiver who is not related to a senior is therefore not covered by the Act. If the abuse occurs in a hospital, nursing home, senior's lodge or some other facility for seniors funded by the government, the provisions of the *Protection of Persons in Care Act* apply (See below at page 24).

How do emergency protection orders and Queen's Bench protection orders work?

Emergency protection orders are court orders granted by a provincial court judge or **justice of the peace** in emergency situations. A judge or **justice of the peace** will grant an **emergency protection order** in cases where family violence has occurred and the safety of the person seeking protection (the "claimant") is at risk. Applications for emergency protection orders are generally made by municipal police, R.C.M.P. officers and members of First Nations police forces either in person or by telephone, although claimants and those acting on their behalf can also apply for emergency protection orders themselves by going to court. Emergency protection orders can include any or all of the following terms or provisions:

- a term ordering the "respondent" (person who poses a threat to the claimant) to stay away from any place where the claimant resides or visits,

- a term prohibiting the respondent from communicating with or contacting the claimant,
- a term granting the claimant the exclusive right to occupy her/his home for a specific period of time,
- a term directing a police officer to remove the respondent from the home,
- a term directing a police officer to accompany a person to the claimant's home for the purpose of supervising the removal of personal belongings, and
- a term directing the seizure of weapons that have been used to commit family violence or threaten the commission of family violence.

A judge or **justice of the peace** can include any other provision or term in an **emergency protection order** that he/she thinks is necessary to protect the claimant. The respondent must be given notice of the **emergency protection order** as soon as possible after it is made. The police are responsible for serving the respondent with a copy of the **emergency protection order**. The **emergency protection order** is only in effect once the respondent has been served. An **emergency protection order** must be reviewed by a justice of the Court of Queen's Bench within seven days after it is granted. At the review hearing, the justice can decide to confirm or **revoke** the order or direct that a hearing be held to decide the matter. He/she can also decide to **revoke** the order and grant a *Queen's Bench protection order* in its place.

There are clearly a number of advantages to applying for emergency protection orders:

- they can be obtained very quickly at any time of the day or night,

- they are free if the police handle the matter, and
- emergency protection orders can be used not only to restrain the abuser but also to remove the abuser from the senior's residence and secure the protection of seniors in other ways.

Queen's Bench protection orders are also designed to provide protection to those who have experienced family violence. They are orders of the Court of Queen's Bench and take longer to obtain than emergency protection orders. They are designed to deal with non-emergency situations. A person who has experienced family violence or someone acting on their behalf may make an application for a Queen's Bench Protection Order. The respondent must be notified of the application and is entitled to be present at the hearing. If a justice of the Court of Queen's believes that the claimant has been the subject of family violence, he/she can make a Queen's Bench protection order.

Any of the terms or provisions which can be included in an **emergency protection order** can be made part of a Queen's Bench protection order. The Court can include other terms as well. It can require the respondent to reimburse the claimant for monetary losses suffered as a direct result of the family violence—for example, loss of earnings, medical and dental expenses, moving and accommodation expenses, legal expenses and the costs of making an application for a protection order. It can also prohibit either the respondent or claimant from taking, using or damaging property which the other party has an interest in and grant either one temporary possession of vehicles, bankcards, cheque books and other specified personal property. The Court can also order the respondent not to communicate either directly or indirectly with the claimant, members of the claimant's family or his/her employers, employees, co-workers or associates in a manner designed to annoy or alarm the claimant. In addition, the

Court can order the respondent to refrain from subjecting the claimant to family violence and to receive counselling.

If the respondent violates the terms of an **emergency protection order** or a Queen's Bench protection order he/she can be charged with an offence under the *Criminal Code*. The respondent can also be cited for contempt of court, which means that he/she could be subject to a fine or imprisonment. If he/she breaches the part of a Queen's Bench protection order requiring him/her to pay the claimant an amount of money, the matter will be handled by the Maintenance Enforcement Program.

Is legal assistance available for those seeking protection orders?

Yes, at certain phases of the process. It is generally not necessary to have legal representation in order to obtain an **emergency protection order**. Though it is possible to apply in person for an **emergency protection order**, the police will generally perform this function on your behalf.

It is a good idea to have legal help at review hearings before the Court of Queen's Bench. **Duty counsel**—lawyers who are on duty at the hearings to answer your questions—is available to help all claimants at the initial review hearing. All claimants are eligible for this legal service regardless of their financial status or the merits of their case. The normal eligibility requirements for receiving **Legal Aid** do not apply in this situation. The police or R.C.M.P. should have the name and phone number of the lawyer or lawyers who perform this function in your area. You should contact **duty counsel** as soon as possible after the **emergency protection order** has been issued in order to prepare for the review hearing. You will need to present information at the

hearing which will convince the court that the protection order should continue to be in place.

The Court of Queen's Bench can order that a protection order be in effect for up to one year. It can extend protection orders for additional one-year periods.

Duty counsel is not available to help claimants apply to renew protection orders. It is also not available for those applying for Queen's Bench protection orders. If you cannot afford a lawyer, you may be able to hire one with the assistance of **Legal Aid**. **Legal Aid's** eligibility rules and procedure do apply in this situation.

When are warrants granted under the Protection Against Family Violence Act?

Under the Act, a warrant to enter and search a place for a family member, to assist or examine a family member and to remove the family member from the premises with his or her **consent** can be obtained from a provincial court judge, **justice of the peace** or justice of the Court of Queen's Bench.²⁵ A warrant may be issued when there are reasonable and probable grounds to believe that access to the family member has been refused, the family member may have been the subject of family violence, and the family member can be found in the place to be searched. The police are authorized to apply for warrants either in person or by telephone or some other form of telecommunication. If you believe that there are grounds for issuing a warrant to assist a senior you know, you should contact the police. The police will need to gather evidence to support the application.

²⁵ *Protection Against Family Violence Act*, s. 10.

IV. Reporting the Abuse of Seniors in Institutional Care

Is there a legal duty to report elder abuse?

Yes, if it occurs in a hospital, senior's lodge, nursing home or some other facility for seniors which receives funding from the government. The *Protection for Persons in Care Act* requires every individual who has reasonable grounds to suspect that an elderly person is being abused or has been abused in these places to report the abuse to the police or government authorities.²⁶ This Act defines abuse as an act or omission causing serious bodily or emotional harm, results in the administration or withholding of medication for an inappropriate purpose resulting in serious bodily harm, sexual abuse, misuse of money/possessions, or neglect.²⁷ There are, however, instances where acts or omissions may not constitute abuse—for example when the senior refuses care. The duty to report **elder abuse** applies even if the information on which the belief or suspicion is based was provided in confidence and its disclosure is prohibited under any other law. Lawyers do not have to report **elder abuse** if they are made aware of the abuse in the course of a solicitor-client relationship.²⁸ There is no legal duty to report abuse when it occurs in the senior's own home or in other private settings where a senior is receiving care or services.

The government has established the following toll free number to report **elder abuse** under the Protection for Persons in Care Act:

1-888-357-9339

If you are being abused in a hospital, nursing home, senior's lodge or group home you can report the matter by calling this number.

²⁶ *Protection for Persons in Care Act*, s. 7.

²⁷ *Protection for Persons in Care Act*, s. 1(2).

²⁸ *Protection for Persons in Care Act*, s. 7.

What happens when a report of abuse is made under the Protection for Persons in Care Act?

If a complaints officer believes that a criminal offence may have been committed, the matter will be referred to the police who will investigate.²⁹ The police may decide to lay criminal charges against those responsible for the abuse. In cases where a complaints officer decides that an investigation is required, an investigator will be appointed or the matter will be referred to the appropriate body.³⁰ The investigator must prepare a report and submit it to the Director. The Director shall make any decision, including steps or measures the service provider or the individual involved must take to prevent the abuse of clients and any other actions that the Direction deems appropriate.³¹ The Act requires the Director to provide a copy of the decision, with reasons, to the complainant, the service provider, the client, the individual involved and any other persons as the Director considers appropriate.

Does the Protection for Persons in Care Act provide any protection for those who report elder abuse to authorities?

Yes, the Act does provide some legislative protection. One of the reasons the abuse of elders in care often goes unreported is that those witnessing or experiencing the abuse fear that the institution will retaliate against them or the senior involved for "blowing the whistle." Employees or service providers may not report **elder abuse** to authorities because they fear that they will lose their jobs or be demoted if they do so. Seniors, their friends and family may choose to keep silent rather than bring the problem to light for fear that the

²⁹ *Protection for Persons in Care Act*, s. 11(7).

³⁰ *Protection for Persons in Care Act*, s. 11(5).

³¹ *Protection for Persons in Care Act*, s. 15.

institution will respond by diminishing or discontinuing service provision or punishing the senior in some other fashion. The ***Protection for Persons in Care Act*** makes it an offence punishable by a substantial fine for individuals and agencies to take this kind of action. It prohibits institutions from taking any adverse job action against an employee or service provider who reports abuse. It also prohibits institutions from altering, interrupting or discontinuing service provision to a senior, or threatening to do so, when a complaint of abuse has been made.³²

V. Suing the Abuser

What kinds of lawsuits can be brought against someone who has committed elder abuse?

A senior who has been physically or sexually abused, forcibly confined or who has experienced neglect or other kinds of violence, including the intentional infliction of emotional suffering, can sue the person who has abused him/her for assault, **battery**, trespass, **negligence** or mental suffering.³³ A senior who has been financially abused may have grounds for suing the abuser for damages or for the **restitution** (recovery) of money or property.

If a civil claim for **elder abuse** is for \$25,000.00 or less it will be heard in **civil claims court** (“small claims court”). If it is for more than \$25,000, the Court of Queen's Bench will hear and decide the matter.

It is not always necessary to have legal representation in **civil claims court**. The Court has developed a handbook to guide people through the process of launching a civil suit. It is, however, a good idea to have

³² *Protection for Persons in Care Act*, s. 18.

³³ Manitoba Law Reform Commission, *Discussion Paper On Elder Abuse And Adult Protection*, 1998 at 24.

a lawyer if the lawsuit raises complicated legal issues or if it involves more than \$25,000.00 and is to be dealt with by the Court of Queen's Bench. If you feel you need legal assistance in order to bring a claim in **civil claims court** and cannot afford a lawyer, and you live in Edmonton or Calgary, you may be able to obtain help from Student Legal Services in Edmonton and Student Legal Assistance in Calgary. These programs are operated by law students and supervised by lawyers. They provide free legal assistance to people who meet their income guidelines. The law students in these programs handle **civil claims court** cases but not Court of Queen's Bench cases.

The **Legal Aid** program will not provide a lawyer for civil claims actions and rarely funds larger civil cases before the Court of Queen's Bench. However, **Legal Aid** will, on occasion, fund a civil claim by a senior in which financial abuse has occurred.

VI. Claiming a Benefit Under the Victims of Crime Act

Are seniors who have been harmed by elder abuse eligible for a financial benefit under the Victims of Crime Act?

Yes, if they have suffered a physical or emotional injury during the commission of a crime and they have reported the crime to the police. The *Victims of Crime Act* provides for a financial benefit to be paid to victims of crimes for injuries that happen during the commission of a crime. Financial compensation is not available for loss of property or damage to property or other kinds of financial abuse. In order to be eligible for the benefit, the crime must have been committed in Alberta and reported to the police within a reasonable time after it occurred.³⁴ As well, applications for the benefit must be submitted to

³⁴ *Victims of Crime Act*, s. 12.

the Victims of Crime Financial Benefits Program within two years of the date the injury happened or within one year from the date that the applicant became or ought to have become aware of the nature and extent of the injury and recognized its effects.³⁵

Application forms are available directly from the Financial Benefits Program or from the police or organizations providing services to victims of crime. The Director of the Financial Benefits Program decides whether an applicant is eligible for the benefit and determines the amount of the benefit based on an assessment of the circumstances surrounding the crime as well as the severity of the injuries sustained. If an applicant disagrees with the Director's decision she or he can **appeal** the matter to the Criminal Injuries Review Board.³⁶

³⁵ *Victims of Crime Act*, s. 12(2).

³⁶ *Victims of Crime Act*, s. 7(1).

Chapter Three: Legal Issues Related to the Mental Health and Competence of Seniors

I. Introduction

Under law, all adults are presumed to be competent to act for themselves and make decisions regarding their personal care and finances. However, adults may be declared **incompetent** to handle some or all matters in their lives through a number of different legal procedures. In cases where adults are incapable of fending for themselves, the court will appoint a guardian and trustee to make most or all personal care and financial decisions for them. In cases where seniors are generally capable of acting for themselves questions may arise regarding their competence to make a particular decision or take a particular action.

The law tends to look at questions of mental competence or **capacity** on a case-by-case and context-by-context basis. A person may be judged competent to make a certain kind of decision in one context and yet be found **incompetent** to make another kind of decision in another situation. For example, a senior may be competent to enter into a contract to have the roof of his/her house replaced but be **incompetent** to make complex decisions regarding his/her finances or to decide to marry or divorce. The focus in determining competency is on whether the person is capable of understanding and appreciating the nature and consequences of the decision he/she is making.

This section of the handbook will focus on a number of issues related to the mental competency and health of seniors:

- the right to make treatment decisions,

- the provision of mental health services under the *Mental Health Act*,
- the **guardianship** and **trusteeship** provisions of the *Adult Guardianship and Trusteeship Act*, and
- the preparation of personal directives and enduring powers of attorney as a means of planning for incapacity and avoiding **guardianship** and **trusteeship**.

II. Right to Make Treatment Decisions

Who has the right to decide what medical treatment an adult should or should not receive?

Generally speaking, it is up to the adult involved to make this decision. In the absence of a medical emergency, a doctor cannot treat someone without first obtaining his/her **consent**. A doctor is entitled to administer medical treatment without obtaining a person's **consent** in emergency situations in order to preserve the person's life or health.³⁷ The right to make treatment decisions for yourself is a basic and important legal right since it involves the right to determine what will or will not happen to your body.³⁸ You may decide to either select or reject the treatment proposed by your doctors, reject all forms of treatment or select another kind of treatment altogether. The decision a person makes is valid and must be respected even if it involves risks as serious as death, goes against the advice of doctors or appears foolish or unwise to others.³⁹

³⁷*Ibid.* at 38.

³⁸*Malette v Shulman* (1990), 67 DLR (4th) 18 at 34.

³⁹*Ibid.* at 38.

What is a valid consent to treatment?

A **consent** to treatment is only legally valid if several guidelines are met:

1. First, the person giving the **consent** must be legally competent to do so. A person who is under a **guardianship** order that removes his/her right to make treatment decisions is not legally competent to **consent** to treatment.
2. Second, a person must be mentally capable of authorizing the treatment. This means that he/she must have the ability to make a reasoned choice about the proposed treatment.⁴⁰
3. The third legal requirement for a valid **consent** is that the **consent** must be freely given. The person must not be coerced or pressured into giving her/his **consent** to treatment.
4. The fourth requirement is that a decision to **consent** to treatment must be a fully informed one. This means that before a senior makes the decision to go ahead with a specific procedure he/she must be given sufficient information about the procedure to evaluate the risks and benefits associated with it as well as other treatment options.⁴¹ The law says that doctors are under a duty to answer any questions a person poses regarding the proposed treatment as well as to explain to the patient, in a way that he/she can understand, the nature of the proposed treatment, its seriousness, and any significant risks

⁴⁰L.E. Rozovsky, *The Canadian Law Of Consent To Treatment* (Toronto: Butterworths Canada Ltd.: 1997) at 6.

⁴¹*Ibid.* at 36.

and consequences it involves.⁴² The information a doctor must provide in order to obtain a valid **consent** to treatment depends upon the medical circumstances of the case as well as a patient's particular life situation.⁴³ A doctor must take into consideration a person's social, economic and employment situation as well as his/her medical condition when he/she explains the risks associated with the proposed treatment.

What happens if a doctor ignores or overrides a senior's treatment wishes?

A doctor who provides treatment to a person against his/her wishes can be sued for committing a "**battery**" against the person. A "**battery**" is an unwanted touching or interference with another person's body. A doctor may also be liable for **battery** if he/she provides a particular treatment to a person who is not capable of consenting to the treatment knowing that the person, while competent, communicated he/she did not want the treatment.⁴⁴ Doctors can also be sued for **negligence** or for committing a **battery** if they obtain **consent** to treatment without fully informing the patient of the nature and consequences of the procedure.

Are there any circumstances in which the treatment wishes of a mentally competent adult can be overruled?

Yes. Under the *Mental Health Act*, a person who has been committed to a mental health facility (a "**formal patient**") can be forced to take medication or be subjected to other kinds of treatment against his/her will. Contrary to what many people believe, people do not

⁴²*Hopp v Lepp* (1980), 112 DLR (3d) 67 (SCC).

⁴³*Reibl v Hughes*, [1980] 2 SCR 880.

⁴⁴*Malette v Shulman et. al.* (1990), 67 DLR (4th) 18 (ONCA) and *Fleming v Reid* (1991), 82 DLR (4th) 298 (ONCA).

automatically lose the right to make treatment decisions for themselves when they are committed to a mental health facility. They keep this right unless a physician determines that they are unable to understand what these kinds of decisions involve and appreciate the consequences of making the decisions and the physician accordingly issues a certificate (a “**certificate of incapacity**”) to this effect. If no **certificate of incapacity** has been issued for a mental health patient, the patient is considered to be competent to make treatment decisions. However, a mental health review panel can overrule the objections of a competent mental health patient to treatment proposed by the patient's doctor if the panel decides that the treatment is in the best interests of the patient. Mental health patients cannot, however, be forced to have **psychosurgery** against their will. In order for **psychosurgery** to be performed, the patient must give his/her **consent** and a review panel must approve the procedure.

The provisions of the *Mental Health Act* which enable the treatment choices of a competent patient to be overruled may violate the *Canadian Charter of Rights and Freedoms* and therefore be found unconstitutional. Similar provisions in Ontario's mental health legislation were found to violate a person's right to security of the person.⁴⁵

What happens when a senior is incapable of making a treatment decision?

As noted above, in emergency medical situations a doctor may provide treatment to a person who is incapable of consenting to treatment in order to preserve the life or health of that person. In cases which are not medical emergencies, other people can make the treatment

⁴⁵ *Fleming v Reid, supra.*

decision on the senior's behalf but only if they are authorized to do so under a **guardianship** order, a **personal directive** or the terms of the *Mental Health Act*.

Guardians are required to make treatment decisions which are in the best interests of seniors. They are also required to follow the instructions outlined in personal directives and to involve those under **guardianship** in the decision-making process. **Agents** acting under the authority of a **personal directive** are required to make the treatment decision which they believe the senior would make if he/she were competent. They must consult the senior involved before making the decision. **Guardianship** and the preparation of personal directives will be discussed in greater detail below.

Under the *Mental Health Act*, a guardian or an **agent** appointed under a **personal directive** can make treatment decisions for a **formal patient** who has been declared incapable of making treatment decisions. In cases where a **formal patient** does not have a guardian or his/her **agent** is not available or willing to make treatment decisions, the person's nearest relative, as defined in the *Mental Health Act*, may make the decision.⁴⁶ The board of a mental health facility can appoint someone else (a “substitute decision-maker”) to make treatment decisions for a **formal patient** if the person does not have a nearest relative or the board believes that the nearest relative authorized to make treatment decisions would not act in the best interests of the patient or is not currently acting in the best interests of the patient. In order to act as a substitute decision-maker, an **agent**, nearest relative or a person designated by a board to act as the nearest relative must have had personal contact with the senior over the preceding year and be willing to take on the responsibility for making treatment decisions.

⁴⁶ *Mental Health Act*, s. 28.

Those making decisions in this situation are required to act in the best interests of patients when they make treatment decisions.

The **Public Guardian** (a provincial government official) is authorized to make treatment decisions for a **formal patient** if there is no one else available to do so.⁴⁷ In cases where patients object to the treatment decision being made for them, the treatment will not be given unless a second doctor agrees with the first doctor's assessment that the patient is not competent to make treatment decisions.

The *Adult Guardianship and Trusteeship Act* gives doctors the authority to provide emergency health care to an adult without his/her **consent** in certain situations.⁴⁸ Such health care may only be provided if it is necessary to preserve the life of the senior, to prevent serious physical or mental harm, or to alleviate severe pain. Before providing such treatment, the doctor must also be satisfied that the senior lacks **capacity to consent** or to refuse to **consent** to the emergency health care as a result of drug or alcohol impairment, a complete or partial lack of consciousness, or another cause. The doctor must first, if practical, obtain the written opinion of a second doctor or health care provider before providing the emergency health care. The doctor may not proceed with the emergency treatment unless the second doctor is satisfied with the proposed treatment measures. Also, the doctor may not proceed in situations where he/she has grounds to believe that the senior has previously expressed a wish (while having **capacity**) to refuse such treatment.

⁴⁷ *Mental Health Act*, s. 28(1)(d).

⁴⁸ *Adult Guardianship and Trusteeship Act*, s. 101.

Are there any other cases where someone else can make a treatment decision for a senior?

The law says that no one can make a treatment decision for someone else except in the circumstances listed above. This means that a spouse or other close relative cannot make a treatment decision for a senior unless he/she has the authority to do so under a **guardianship** order, a **personal directive** or the *Mental Health Act*.

III. Provision of Mental Health Services under the Mental Health Act

How are mental health services provided under the Mental Health Act?

There are primarily two ways in which people can receive mental health care under the *Mental Health Act*. They can be admitted to a mental health facility on an informal, voluntary basis as an in-patient or out-patient. They can also be committed to a mental facility as a **formal patient**.

How are people committed to mental health facilities as formal patients?

There are essentially four ways in which this can happen.

1. A doctor can issue an admission certificate after examining a person if he/she believes that the person is suffering from a mental disorder, is in a condition presenting or likely to present a danger to himself or others and cannot be treated except as a **formal patient**. The admission certificate enables authorities to apprehend the person, convey him/her to a mental health facility and observe, examine, assess, treat, detain and control the person for a 24 hour period. The person must be released

after the 24 hour period has expired unless a second admission certificate is issued by another physician.⁴⁹

2. Individuals may also apply to a provincial court judge for a warrant to apprehend and convey a person to a mental health facility for an initial assessment. A judge may issue a warrant if he/she is satisfied that the person is suffering from a mental disorder, is in a condition presenting or likely to present a danger to himself or others and there is no other way to have the person examined.⁵⁰
3. The third way in which a person can be brought to a facility for assessment is by being apprehended by a police officer. A police officer has the authority to do this if he/she has reasonable and probable grounds to believe that the person is suffering from a mental disorder, is in a condition presenting an immediate danger to himself or others, the person should be examined to protect the person's safety or the safety of others and the circumstances are such that there is no time to go to court and apply for a warrant to apprehend the person.⁵¹
4. A person coming into Alberta may also be apprehended and conveyed to a mental health facility for assessment on the authority of a certificate issued by the Minister of Health. The Minister may take this action if he/she has reasonable and probable grounds to believe that the person is suffering from a mental disorder, is in a condition presenting or likely to present

⁴⁹ *Mental Health Act*, ss. 2 and 4.

⁵⁰ *Mental Health Act*, s. 10.

⁵¹ *Mental Health Act*, s. 12.

a danger to himself or others and the person cannot be treated on an informal or voluntary basis.⁵²

A person who is conveyed to a mental health facility in these ways can be held for a 24 hour period. He/she must be released after the 24 hour period has expired unless two admission certificates are issued by physicians. The issuance of two admission certificates gives mental health authorities the authority to observe, examine, assess, treat, detain and control a person for a one month period.⁵³ The period of detention may be extended for two further one month periods and for additional six month periods by issuing renewal certificates by two separate physicians. At least one of the physicians issuing a renewal certificate must be a psychiatrist and at least one must be a member of the staff of the facility.

What information must a formal patient be given when admission or renewal certificates are issued?

The *Mental Health Act* requires facilities to tell formal patients why admission or renewal certificates have been issued against them and inform them that they have a right to apply to a mental health review panel for cancellation of the certificates. The *Mental Health Act* also requires facilities to give a **formal patient**, the formal patient's guardian, a person designated by the patient and, with the **consent** of the patient, the patient's nearest relative a written statement outlining the reasons for the issuance of the certificates, copies of the certificates as well as information concerning the length of the

⁵² *Mental Health Act*, s. 24.

⁵³ *Mental Health Act*, s. 8.

patient's detention and the **appeal** process. Facilities are also required to help formal patients with the **appeal** process in any way they can.⁵⁴

What process must be followed in order to challenge the issuance of admission and renewal certificates?

The patient, the patient's guardian, an agent appointed under a **personal directive** or someone else acting on the patient's behalf must apply to the chair of the review panel in the facility in which he/she is detained in order to initiate a review of admission or renewal certificates.⁵⁵ Each mental health facility has a review panel which is composed of a chair and vice chair who are lawyers and a roster of members made up of psychiatrists, physicians and members of the general public. The facility can provide you with the name and address of chairs of the review panel as well as an application form.

Patients and their representatives have the right to be present at review panel hearings and to cross-examine anyone who presents evidence to the review panel.⁵⁶ Though patients also have the right to have access to information concerning the review, a review panel may refuse to disclose information to the patient if it feels that the disclosure might seriously endanger the safety of another person. In the hearing, the board of the mental health facility in which the patient is detained bears the burden of proving that the patient suffers from a mental disorder, is in a condition presenting or likely to present as danger to himself or others and that detention is required.

Review panels may decide to cancel or uphold the admission or renewal certificates which are in effect at the time of the hearing.

⁵⁴ *Mental Health Act*, s 14.

⁵⁵ *Mental Health Act*, s. 38.

⁵⁶ *Mental Health Act*, s. 37(3).

Review panels must make a decision within 24 hours of hearing the application and inform the patient of the decision within 48 hours of the hearing. If a review panel refuses to cancel admission or renewal certificates it must give the patient written reasons for its decision.

A patient can **appeal** the review panel's decision to the Court of Queen's Bench within 14 days of receiving an order or a written decision of a review panel.⁵⁷

Patients can apply to the review panel for further reviews of admission or renewal certificates if there has been a significant change in their circumstances since the previous hearing. If a patient has been detained for a six month period and no review of certificates has been launched on his/her behalf during this time period, the review panel for the facility in which the patient is detained will meet with the patient and review the status of the certificates.

Do formal patients have the right to appeal any other decisions made about their mental health care?

Yes. Formal patients who have been declared incapable of making treatment decisions for themselves by a physician can apply to the review panel to have the physician's opinion reviewed. In the hearing, the board of the facility in which the patient is detained bears the burden of proving that the physician's opinion is correct.⁵⁸ The review panel may cancel the certificate of incompetence issued by the physician or decide to uphold it. The review panel's decision can be appealed to the Court of Queen's Bench.

⁵⁷ *Mental Health Act*, s. 43.

⁵⁸ *Mental Health Act*, s. 42.

What other rights do patients have under the Mental Health Act?

Patients have a right to privacy concerning the letters they write and receive in a facility. The *Mental Health Act* prohibits anyone who is a member of the board or staff of a facility from opening, examining, withholding or obstructing the delivery of mail written by or to a patient.⁵⁹

Patients also have the right to have access to their lawyers as well as to have other visitors. However, they may be denied access to a particular person—other than their lawyer—if a physician determines that the person would hurt the patient's health.⁶⁰

Patients also have the right to have access to their diagnostic and treatment records and to have these records kept private and confidential.⁶¹ A patient or the patient's legal representative may apply to the Court of Queen's Bench for an order directing those in control of the patient's record to provide the record or a copy of the record to the patient, the patient's legal representative or another person.

What legal resources are available to help mental health patients exercise their rights?

Legal Aid may provide lawyers to act for patients appearing before review panels. **Duty counsel** lawyers generally meet with patients shortly before review panel hearings to discuss their cases. The facility in which a patient is detained can help you get in contact with the **duty counsel** lawyer assigned to work on your case.

⁵⁹ *Mental Health Act*, s. 15.

⁶⁰ *Mental Health Act*, s. 16.

⁶¹ *Mental Health Act*, s. 17.

Duty counsel is not available to help patients **appeal** decisions made by review panels or launch other kinds of legal challenges regarding their mental health care. If you cannot afford to hire a lawyer to deal with these kinds of matters you may be able to get legal help with the assistance of the **Legal Aid**. **Legal Aid's** normal eligibility rules and application process apply to these kinds of legal actions.

Formal patients also have access to the **Mental Health Patient Advocate**. The **Mental Health Patient Advocate** provides information to patients, their families, friends and advocates regarding the legal rights of patients under the *Mental Health Act*, how patients may obtain legal assistance and make applications to review panels as well as how they may **appeal** review panel decisions to the Court of Queen's Bench.⁶² The **Mental Health Patient Advocate** also investigates complaints about the care and treatment of formal patients, initiates inquiries or investigations into the way in which facilities deal with formal patients and makes recommendations on specific cases and general issues.

IV. The Adult Guardianship and Trusteeship Act

A. Supported Decision-Making

What is adult supported decision-making?

The *Adult Guardianship and Trusteeship Act* established assisted decision-making, which allows individuals who meet the requirements of the Act to assist adults in making important decisions regarding personal matters. In order to establish a supported decision-making authorization (permission to support the decision-making), the supported adult must have the **capacity** to make his/her own personal

⁶² *Mental Health Act*, s. 45.

decisions. An adult with **capacity** may make a supported decision-making authorization with one to three supporters, who must be adults.⁶³

A supporter may assist a supported adult in decision-making and may communicate or assist the adult in communicating his/her decisions to other persons. A supporter may also be authorized to access, collect or obtain personal information about the supported adult from public bodies, custodians or organizations if it is relevant to the decision (except for financial information).⁶⁴

A supported decision-making authorization must be in the prescribed form (available at the office of the **Public Guardian**) and meet the requirements of the regulations, however no formal Court filings are required. Both the supported adult and the supporter should retain copies of the executed (signed) authorization.⁶⁵ If the supported adult loses the **capacity** to make personal decisions, or the Court appoints a co-decision maker or guardian, or the supported adult's **personal directive** is in effect, the supported decision-making authorization automatically ends.⁶⁶ Also, if at any time either party decides they do not wish to be bound by the authorization, a termination of supported decision-making authorization form can be executed (also available at the Office of the **Public Guardian**).

In order to ensure that all decisions reflect the true desires of the supported adult, a person may refuse to accept a decision made with the assistance of the supporter or communicated by the supporter if

⁶³ *Adult Guardianship and Trusteeship Act*, s. 4(1).

⁶⁴ *Adult Guardianship and Trusteeship Act*, s. 9.

⁶⁵ See online:

<http://www.seniors.alberta.ca/opg/guardianship/options/supported.asp>

⁶⁶ *Ibid.*

the person has reasonable grounds to believe that the supporter exerted undue influence on the supported adult, or that the supporter may be fraudulently misrepresenting the wishes of the supported adult.⁶⁷

For more information on supported decision-making, please visit the attached Government of Alberta website or contact the Office of the **Public Guardian**.⁶⁸

B. Co-decision-making

A co-decision-making order serves as an alternative to **guardianship**, and is also established under the Adult Guardianship and Trusteeship Act. Such an order may be effective in situations where an adult cannot make personal decisions on his or her own, but would be able to do so with the assistance of a trusted friend, relative, or other person. The adult must not have a guardian or a **personal directive** in effect.⁶⁹ While supported decision-making only allows the supporter to assist adults in retrieving personal information and communicating decisions, co-decision-makers actually take part in decision-making with the adult.

A Co-decision-making Order must be granted by the Court, and the adult himself or an interested person may apply to the Court for an order.⁷⁰ Much like an application for **guardianship** or **trusteeship**, to apply for a co-decision-making order a **capacity** assessment report and other documents as required by the regulations, must be filed.⁷¹ A co-

⁶⁷ *Adult Guardianship and Trusteeship Act*, s. 6.

⁶⁸ See online:

<http://www.seniors.alberta.ca/opg/guardianship/options/supported.asp>

⁶⁹ See online:

<http://www.seniors.alberta.ca/opg/guardianship/options/Codecision.asp>

⁷⁰ *Adult Guardianship and Trusteeship Act*, s. 13(1).

⁷¹ *Adult Guardianship and Trusteeship Act*, s. 13(2).

decision-making order can be conducted through a desk application (which may or may not require a hearing), or directly through an application for a hearing. The difference between desk applications and hearings will be discussed in greater detail under **guardianship** and **trusteeship** below.

In order to grant a co-decision-making order the Court must be satisfied that:

- the adult's **capacity** is significantly impaired,
- the adult would have the necessary **capacity** if provided with the guidance and support of a co-decision-maker,
- less intrusive or restrictive measures have been considered or implemented (such as a supported decision-making authorization) and would not be or were not effective,
- it is in the adult's best interests to make such an order, and
- the proposed co-decision-maker has consented, and the adult consents to the proposed co-decision-maker and the order.⁷²

In determining whether it is in the adult's best interests to make an order, the Court must consider: the **capacity** assessment report, the report of the review officer, any **personal directive** of the adult, any supported decision-making authorizations, whether the impairment of the adult's **capacity** is likely to expose him/her to harm, whether the adult needs assistance to make decisions, and whether the appointment of a co-decision-maker will produce benefits for the adult

⁷² *Adult Guardianship and Trusteeship Act*, s. 13(4).

that would outweigh any adverse consequences.⁷³ The Court may also consider any additional factors it considers important.

Co-decision-makers must be adults and be suitable for the responsibility in the Court's view. In a co-decision-making order, the Court will designate the personal matters to which the order applies. Co-decision-makers are also entitled to reimbursement for direct expenses incurred carrying out their duties, but are not entitled to compensation for their efforts while acting as a co-decision-maker.⁷⁴

Much like **guardianship** and **trusteeship** orders (as will be discussed below), co-decision-making orders are subject to review. An assisted adult, a co-decision-maker, or any interested person may apply to the Court for review of a co-decision-making order.⁷⁵ If the Court sees fit, it will terminate the order.

For more information on co-decision-making, please visit the attached Government of Alberta website or contact the Office of the **Public Guardian**.⁷⁶

C. Guardianship

What is adult guardianship?

Guardianship is a legal relationship established by a court order which gives one person—the guardian—the authority to make decisions and act for another. The *Adult Guardianship and Trusteeship Act* establishes a form of adult **guardianship**. It provides for the appointment of guardians to make personal decisions for adults who

⁷³ *Adult Guardianship and Trusteeship Act*, s. 13(5).

⁷⁴ *Adult Guardianship and Trusteeship Act*, s. 19.

⁷⁵ *Adult Guardianship and Trusteeship Act*, s. 21.

⁷⁶ See online:

<http://www.seniors.alberta.ca/opg/guardianship/options/Codecision.asp>

are incapable of acting for themselves. Adults who are under **guardianship** or **trusteeship** orders or both kinds of orders are referred to as "represented adults."⁷⁷ Adult **guardianship** gives guardians tremendous power over the lives of seniors and severely restricts their independence and decision-making authority. It should therefore only be used in cases where seniors are incapable of caring for themselves and making reasonable judgements regarding their personal care—for example, when a senior is in the advanced stages of **Alzheimer disease**.

Who can be appointed a guardian under the Adult Guardianship and Trusteeship Act

In order to serve as a senior's guardian a person must be an adult and be willing to take on the responsibility. A person will only be appointed as guardian if the Court is also satisfied that s/he will act in the best interests of the senior and is suitable and able to act as the guardian. Suitability will be determined having regard to the wishes of the senior, the relationship between the senior and the proposed guardian if it appears relevant to the ability of the proposed guardian to act as such, the apparent ability of the proposed guardian to effectively manage the personal matters of the senior, and any other matter the Court thinks is important.⁷⁸ The proposed guardian's interests must not conflict with the interests of the represented adult, however the fact that a person is a relative or potential beneficiary of a dependent adult does not mean that he/she is in a conflict of interest position and cannot serve as the dependent adult's guardian. In most cases, the spouses, children and friends of seniors are appointed to act as their guardians. The Court may appoint a senior government official known

⁷⁷ *Adult Guardianship and Trusteeship Act*, s. 1(hh).

⁷⁸ *Adult Guardianship and Trusteeship Act*, s. 28(1).

as the **Public Guardian** as guardian in cases where a person needs a guardian and there is no one willing, able and suitable to take on the responsibility. The **Public Guardian** must be notified and given a reasonable opportunity to make representations to the Court regarding the proposed appointment. There are several people throughout the province who act as the **Public Guardian's** representatives and carry out his or her duties and responsibilities. The Court may also decide to appoint another person as a senior's guardian if it determines that the person who is applying to become the guardian is not qualified to take on the responsibility. The Court may also appoint multiple guardians. Such orders may require that the guardians exercise their authority jointly or separately in respect of one or more personal matters.⁷⁹

How are guardians appointed?

Guardians are appointed by the **Surrogate Court**, a special court that deals with wills and represented adults. The **Public Trustee**, the **Public Guardian**, and any other adult person who is concerned for the welfare of a senior may apply to the Court for an order appointing a guardian. There are different ways in which a **guardianship** order can be obtained.

The Court can make an order without a Court hearing and without the applicant, the person who is the subject of the order or anyone else being present in Court. This kind of procedure is known as a **desk procedure**. A **guardianship** order can also be made following a Court hearing.

⁷⁹ *Adult Guardianship and Trusteeship Act*, s. 31.

Starting the Process

In order to initiate both kinds of procedures, the applicant must first file an application form plus a number of other documents with either the Office of the **Public Guardian** or the Court, depending on the procedure chosen. These documents include an affidavit of the applicant, an assessment of the individual's ability to make personal decisions for themselves ("**capacity** assessment report"), a **guardianship** plan in a prescribed form, two personal references on behalf of each proposed guardian, and the written **consent** of the person proposed as the guardian.⁸⁰ The **capacity** assessment report is an important part of the application.

In determining whether it is in a senior's best interests to appoint a guardian, the Court must consider, among other things, the documents mentioned above, as well as the report of the review officer, any **personal directive** of the senior, any supported or co-decision making authorizations/orders, whether the senior's lack of **capacity** is likely to expose him/her to harm, whether the benefits of guardian appointment would outweigh any negative consequences for the senior, and any other matters the Court considers relevant.⁸¹

Desk Procedure

Under the **desk procedure**, no court hearing will be held unless requested by the senior in question, one of the individuals who was notified as a result of the application, or an interested person. Once an application has been submitted, the Office of the **Public Guardian** will appoint a review officer to oversee the application. The Review Officer must make reasonable efforts to visit the senior to discuss the nature

⁸⁰ *Adult Guardianship and Trusteeship Regulation*, s. 34(3).

⁸¹ *Adult Guardianship and Trusteeship Act*, s. 26(7).

of the application and to ensure that they understand it and know they have a right to a hearing.⁸² The review officer will also attempt to learn the views and wishes of the senior. The review officer is also required to notify a number of relevant individuals of the application.⁸³ The senior, those notified by the review officer, other interested persons, and the review officer have the right to request a hearing. Once the review has been completed, the review officer must file the application with the Court along with the report.⁸⁴ Once the application has been filed by the review officer, so long as no request for a hearing has been made, the Court may make a decision whether to grant the application. The Court may however also decide to order a hearing as well if it considers it necessary.

Seniors can make desk applications themselves by using the “Self-Help Kit.” This Kit is published by the Government of Alberta and contains all necessary forms and instructions. The Kit is available from the Office of the **Public Guardian** or on the Government of Alberta website.⁸⁵ Alternatively, you can seek assistance from one of the agencies contracted by the Office of the **Public Guardian**, or you may want to contact a lawyer.

Court Hearing

Under the court hearing procedure, the application is submitted directly to the court and proceeds to a hearing in a public court room. Whereas the review officer is responsible for serving all required parties with the necessary documents in the **desk procedure**, under a court hearing application it is the applicant that is responsible.⁸⁶ The

⁸² *Adult Guardianship and Trusteeship Regulation*, s. 36.

⁸³ *Adult Guardianship and Trusteeship Regulation*, s. 35.

⁸⁴ *Adult Guardianship and Trusteeship Regulation*, s. 39.

⁸⁵ See online: <http://www.seniors.alberta.ca/opg/>

⁸⁶ *Adult Guardianship and Trusteeship Regulation*, s. 44.

applicant must serve required documents on the senior in question and the review officer. Notice of the hearing must also be served on other interested persons and particular relatives as outlined in the *Adult Guardianship and Trusteeship Regulations*.⁸⁷ These documents must be served or sent, as the case may be, at least one month before the hearing date. As with **desk procedure** applications, the Review Officer must complete a report and submit it to the Court for consideration during the hearing.

The hearing gives the senior who is the subject of the application, other people who have been served as well as anyone else the Court agrees to hear from the opportunity to voice their support for or objections to the application.

Guardianship orders can also be obtained more quickly in order to deal with emergencies. The Court can allow an emergency **guardianship** application to proceed where:

- the adult lacks the **capacity** to make a decision about a personal matter, and
- is in immediate danger of death or suffering serious physical or mental harm if a **guardianship** order is not granted.⁸⁸
- The Court may also make an order to dispense with any things that would normally be required under a standard **guardianship** application, such as the documents that must usually be filed, service of the application, and evidence to be considered.⁸⁹

⁸⁷ *Adult Guardianship and Trusteeship Regulation*, ss. 44(3) and (4).

⁸⁸ *Adult Guardianship and Trusteeship Act*, s. 27(3).

⁸⁹ *Adult Guardianship and Trusteeship Act*, s. 27(2).

Given the serious implications of a **guardianship** application it is important that those involved—particularly the person who is the subject of the application—be notified and given an opportunity to participate in the proceeding. Generally speaking, the person who is the subject of the application will be given notice of the application except in cases where it is clear that the person would suffer physical or emotional harm if he/she were made aware of the application.⁹⁰

What factors does the Court consider when it makes a guardianship order?

The Court considers whether a person needs a guardian and whether it is in his/her best interests for one to be appointed. The Court has the authority to appoint a guardian in cases where it finds that an adult is repeatedly or continuously unable to care for himself/herself and to make reasonable judgements regarding his/her personal care, and believes that putting the person under **guardianship** would:

- be in the person's best interests, and
- result in a substantial benefit to the person.

What decision-making powers or authority are granted to guardians under guardianship orders?

The amount of decision-making authority granted to a guardian depends upon the functioning level or abilities of the represented adult. The Court is supposed to grant to the guardian only the powers and authority necessary to ensure that reasonable judgements are being made about all matters relating to the personal life and health of the represented adult.⁹¹ This means that the Court must review the functional assessment done on the represented adult as well as other

⁹⁰ *Adult Guardianship and Trusteeship Act*, s. 27(5).

⁹¹ *Adult Guardianship and Trusteeship Act*, s. 33.

evidence relating to the represented adult's ability to care for themselves and identify the areas in which the represented adult can function adequately and areas in which they cannot. The Court may decide that the represented adult is incapable of making reasonable judgements about all personal matters and give the guardian the authority to **consent** to health care on behalf of the represented adult, decide where the represented adult is to live and with whom the represented adult is to live and socialize and make all other decisions concerning his or her personal life and care. The Court may, on the other hand, decide that the represented adult only needs a substitute decision-maker in one or two areas and may grant the guardian the authority to make decisions in these areas only.

The Court *cannot* give the powers and decision-making authority granted to an agent under a **personal directive** to a guardian.⁹² This means that a senior may avoid being placed under **guardianship** if the areas in which s/he requires substitute decision-making are covered in the **personal directive** prepared while he or she was competent. However, a guardian may need to be appointed to deal with matters not addressed in the **personal directive**. As well, the **Surrogate Court** may decide to terminate an agent's authority and grant the decision-making powers and authority exercised by the agent to a guardian in cases where the agent is no longer willing or able to fulfill his or her duties and responsibilities or is acting improperly.

What role does the alternate guardian play?

The role of the **alternate guardian** is to take over the duties and responsibilities of the guardian in the event of the death or temporary absence of the guardian. Upon the death of the previous guardian, the

⁹² *Adult Guardianship and Trusteeship Act*, s. 33(5).

appointment of a guardian or trustee for the previous guardian, the previous guardian's incapacity, or the written **consent** of the previous guardian, the **alternate guardian** will act as guardian without further Court proceedings.⁹³ However, in certain circumstances, the **alternate guardian** must notify the Court that he/she has begun to act as such. The **alternate guardian** has the same decision-making powers and authority as the regular guardian and can be appointed when the Court makes or reviews a **guardianship** order. It is a good idea to have an **alternate guardian** appointed at the same time that the guardian is appointed to ensure that the represented adult's interests will be fully protected.

How are guardians supposed to exercise their powers and decision-making authority?

They must exercise their powers and authority in the best interests of represented adults, in the least restrictive way possible and in a manner designed to encourage the represented adult to become self sufficient and capable of making reasonable judgements for themselves.⁹⁴ In cases where the guardian is dealing with a matter which is covered in a **personal directive**, the guardian must exercise any power and authority in accordance with the instructions contained in the **personal directive**.

How often must guardianship orders be reviewed by the Court?

Emergency **guardianship** orders must be reviewed within 90 days of the date of the order.⁹⁵ The represented adult, the guardian, or any interested person may apply to the Court for a review of a **guardianship** order at any time. Guardians are required to apply for a

⁹³ *Adult Guardianship and Trusteeship Act*, s. 32(3).

⁹⁴ *Adult Guardianship and Trusteeship Act*, s. 35.

⁹⁵ *Adult Guardianship and Trusteeship Act*, s. 27(4).

review themselves in certain situations, for example where there is a significant change in the needs, circumstances, or **capacity** of the represented adult.⁹⁶

How are reviews of guardianship orders processed?

They are processed in much the same way that **guardianship** orders are processed. A review can be conducted through a **desk procedure** without a hearing or it can be done with a Court hearing and with all parties present.

What does the Court consider when it reviews a guardianship order?

The Court considers whether the conditions which made the appointment of a guardian necessary in the first place continue. For example, the court looks at whether the represented adult continues to be unable to care for himself or herself and to make reasonable judgements about his/her personal care. The Court also considers whether **guardianship** continues to be in the best interests of the represented adult and to result in a substantial benefit to the represented adult, and whether the guardian has exercised his/her power and authority in accordance with the **guardianship** order. The Court can decide that the order should continue to be in force or it can end, vary or replace the order entirely.

Under what circumstances can a guardian be discharged?

The Court may discharge a guardian if:

- it determines that a represented adult no longer needs a guardian, or

⁹⁶ *Adult Guardianship and Trusteeship Act*, s. 27(2)(b).

- the guardian is no longer able or willing to continue to act as guardian, has failed to fulfill the duties and responsibilities as guardian, has acted in a manner that has endangered or may endanger the well-being of the represented adult or is, for some other reason, no longer a suitable person to act as guardian.⁹⁷

The guardian or anyone else who has an interest in the matter, including the represented adult, may apply to the Court for an order discharging the guardian.

Is it necessary to have a lawyer to apply for a guardianship order or a review of a guardianship order?

You should have a lawyer if you are applying for a **guardianship** order in an emergency situation, if the application is likely to be contested, or if it will raise complex legal issues. However, in other kinds of cases it is possible to proceed without a lawyer. The Office of the **Public Guardian** has prepared kits to guide people through the process of applying for **guardianship** orders and reviews of **guardianship** orders and helps applicants work through these processes. You should contact your local **Public Guardian**'s office to find out where you can pick up these kits and get help initiating **guardianship** applications and reviews of **guardianship** orders on your own. You can also access the self-help kits online at the Government of Alberta website.⁹⁸

Who covers the cost of guardianship applications under the Adult Guardianship and Trusteeship Act?

The cost of applying for **guardianship** orders and reviews of **guardianship** orders and of making other kinds of applications under the *Adult Guardianship and Trusteeship Act* can be high. In addition to

⁹⁷ *Adult Guardianship and Trusteeship Act*, s. 40(5).

⁹⁸ See online: <http://seniors.alberta.ca/opg/guardianship/forms/>

lawyers' fees, applicants have to pay for the preparation of reports, the filing of documents in Court, photocopying, etc. Applicants can apply to Court for an order directing that someone else pay part or all of these costs. This is called an application for "costs." The Court may order any or all of the following parties to pay costs:

- the person who is making the application,
- the represented adult's estate,
- the trustee, or
- the Crown (the Alberta government).⁹⁹

The Court can only order the Crown to pay costs in cases where it would pose an economic hardship for the applicant, the represented adult or the represented adult's estate to do so. The amount that an applicant can recover against the Crown for costs is set by regulation.¹⁰⁰

Applicants who apply for **guardianship** orders or reviews of **guardianship** orders or make other kinds of applications themselves without the help of a lawyer can recover an amount designed to cover "reasonable disbursements" or expenses. Applicants who retain lawyers to help them can get up to \$425 plus an amount to cover reasonable disbursements for an application for a **guardianship** order, co-decision making order, or **trusteeship** order or a review of a **guardianship** order and up to \$500 plus reasonable disbursements for any other application.¹⁰¹ If you want to seek an order for costs against the Crown you must indicate this on the Application Form¹⁰² and

⁹⁹ *Adult Guardianship and Trusteeship Act*, s. 115.

¹⁰⁰ *Adult Guardianship and Trusteeship Regulation*, s. 100(2).

¹⁰¹ *Adult Guardianship and Trusteeship Regulation*, s. 100(2).

¹⁰² *Adult Guardianship and Trusteeship Regulation*, s. 100.

provide evidence of hardship by filling in Part 6 of a form called the Application Information Summary.

What can seniors do if they have concerns about guardianship applications or the way in which guardians are performing?

There are a number of things they can do.

1. They can bring their concerns to the attention of the **Public Guardian** who may, in turn, raise them in Court in the context of **guardianship** applications or take some other action--for example, initiate an application for review of a **guardianship** order or the discharge of the guardian.
2. They can file a **notice of objection** to a **desk procedure** and make their views known in Court.
3. Represented adults and others acting on their behalf can also apply for reviews of **guardianship** orders.
4. Represented adults and other people who have a concern about the way a guardian is performing his/her duties and responsibilities can also apply for the discharge of the guardian.

It is a good idea for represented adults and other seniors to have a lawyer in these proceedings. If the represented adult cannot afford a lawyer, he/she may be eligible for **Legal Aid**. **Legal Aid**'s normal application process and qualification rules apply to these kinds of proceedings. **Legal Aid** is unlikely to provide legal assistance to anyone other than the represented adult or someone acting on the represented adult's behalf who wishes to initiate or intervene in a **guardianship** proceeding. An applicant who cannot afford to cover the cost of the proceeding can, however, try to obtain an order for costs

against either the estate of the represented adult or the Crown on the grounds of economic hardship.

For more information on **guardianship**, please visit the attached Government of Alberta website or contact the office of the **Public Guardian**.¹⁰³

D. Trusteeship

What is the difference between guardianship and trusteeship under the Adult Guardianship and Trusteeship Act?

Guardianship concerns the **personal care** of an adult while **trusteeship** is concerned with the adult's **financial affairs**. A guardian has the authority to make health care and other kinds of decisions which affect a senior's "person" while a trustee has the authority to make decisions concerning a senior's estate, including real and personal property, investments, businesses and income. The same person may and often does serve as the senior's guardian and trustee. By "estate", we are not referring to the senior's will.

Who can be appointed a trustee under the Adult Guardianship and Trusteeship Act?

The following individuals or entities may be eligible to serve as a senior's trustee:

- an adult,
- a trust corporation, or
- the **Public Trustee**.¹⁰⁴

¹⁰³ See online:

<http://www.seniors.alberta.ca/opg/guardianship/options/Guardianship.asp>

In order to appoint an adult as trustee, that adult must **consent** to act as such. The **Surrogate Court** must also be satisfied that the person will act in the best interests of the represented adult, and he or she is a suitable person to assume the duties and responsibilities of trustee and will not be placed in a position where his/her interests will conflict with those of the dependent adult. The fact that a person is a relative or potential beneficiary of a represented adult does not mean that he or she is in a conflict of interest and cannot serve as the represented adult's trustee. In making this decision, the Court must also consider the views and wishes of the represented adult (assuming they are ascertainable), the relationship between the represented adult and the proposed trustee, and the ability of the proposed adult to manage the represented adult's estate.¹⁰⁵ In most cases, spouses, children, relatives and others close to seniors serve as their trustees.

How are trustees appointed?

They are appointed by the **Surrogate Court** in much the same way that guardians are appointed. It is up to those seeking to become the trustee or to have someone else appointed as trustee to apply to the Court for the order.

There are different ways in which a **trusteeship** order can be obtained.

1. The Court can make an order without a Court hearing and without the applicant, the person who is the subject of the order or anyone else being present in Court. This procedure is called a **desk procedure**.
2. A **trusteeship** order can be made following a full hearing into the matter.

¹⁰⁴ *Adult Guardianship and Trusteeship Act*, s. 49.

¹⁰⁵ *Adult Guardianship and Trusteeship Act*, s. 49(1)(a).

In order to initiate both kinds of procedures the applicant must first file an application form plus a number of other documents with the Court. These documents include a **capacity** assessment report of a physician or psychologist and a **trusteeship** plan in the required form.¹⁰⁶ The **capacity** assessment report is an important part of the application. Judges rely heavily on the opinion of doctors and psychologists to decide whether a person needs a trustee. In desk procedures, the applicant must also file the affidavit of the applicant, an inventory or an undertaking to file an inventory with the Court within six months of becoming trustee, the **consent** of the trustee, and two personal references for the trustee.¹⁰⁷ Much the same as a desk application for **guardianship**, upon the filing of a completed **trusteeship** application, the review officer assigned to the file will be responsible for serving the required interested persons as required by the regulations.¹⁰⁸

A person who has been served with the application may object to the application by filing a **request for hearing** with the review officer. The **request for hearing** must be filed by a specific time as specified in the regulations. The time that an individual has to file the **request for hearing** is dependent on that individual's connection to the represented adult.¹⁰⁹ The review officer may also request a hearing in his/her report to the Court. If no one files a **request for hearing** the Court can go ahead and review the documents and appoint a trustee without a hearing or they may choose to order a hearing.¹¹⁰ If someone

¹⁰⁶ *Adult Guardianship and Trusteeship Act*, s. 46(2).

¹⁰⁷ *Adult Guardianship and Trusteeship Regulation*, s. 34(4).

¹⁰⁸ *Adult Guardianship and Trusteeship Regulation*, s. 35.

¹⁰⁹ *Adult Guardianship and Trusteeship Regulation*, s. 37.

¹¹⁰ *Adult Guardianship and Trusteeship Regulation*, s. 40.

files a **request for hearing** or the Court decides that a hearing is necessary one will be scheduled.

A hearing will also be held if the applicant applies for one directly. An applicant may decide to choose this option if he/she thinks that someone may object to the application or wants to seek the Court's direction on some matter relating to the application. While in a desk application the review officer is responsible for serving the required documents on all parties required by the regulations, when the applicant applies directly for a hearing he/she is required to serve all parties with the required documents and notice of hearing.¹¹¹

What if the senior is in immediate danger of losing property?

Trusteeship orders can also be obtained more quickly in order to protect the property or estate of an adult. The Court can allow a **trusteeship** application to proceed and may dispense with or modify any requirement that would otherwise apply under the Act, such as documents that are required to be filed, service of notice of the application, or any evidence regularly required to be considered in making a **trusteeship** order. In order for the Court to make such an order upon application, the adult who is the subject of the application must lack the **capacity** to make a decision about a financial matter and must be in immediate danger of suffering serious financial loss if an order is not granted immediately.¹¹² If a Court grants a **trusteeship** order on an emergency basis, the Court must specify that it must be reviewed within 90 days of the date of the order.¹¹³

¹¹¹ *Adult Guardianship and Trusteeship Regulation*, s. 44.

¹¹² *Adult Guardianship and Trusteeship Act*, s. 48(2).

¹¹³ *Adult Guardianship and Trusteeship Act*, s. 48(6).

When does the Public Trustee become trustee under the Adult Guardianship and Trusteeship Act?

There are a number of circumstances in which the **Public Trustee** can serve as trustee under the *Adult Guardianship and Trusteeship Act*. The **Public Trustee** is required to make an application to Court for an order appointing herself/himself as trustee in cases where he/she believes that a person's estate needs a trustee and there is no one willing, able or suitable to be appointed trustee. It is up to the **Public Trustee** to determine whether an estate requires a trustee and should be placed under his/her supervision. The Court may also appoint the **Public Trustee** as trustee if it determines that the person proposed as trustee in an application is not a suitable candidate and the **Public Trustee** agrees to the appointment. The **Public Trustee** also becomes trustee if the trustee appointed by the Court dies and no one has been appointed to take his/her place and if a **certificate of incapacity** has been issued for a person staying in a psychiatric facility.

What factors does the Court consider when determining whether it is in an adult's best interests to make a trusteeship order?

It considers whether a person needs and would benefit from appointing a trustee as well as whether it is in the person's best interests for one to be appointed. The Court will evaluate the following in determining whether to appoint a trustee:

- the **capacity** assessment report and any other relevant information regarding the adult's incapacity,
- the proposed **trusteeship** plan,
- any **enduring power of attorney** given by the adult,

- whether the appointment of a trustee would be likely to produce benefits for the adult that would outweigh any negative consequences, and
- any other matters that the Court deems relevant.¹¹⁴

An **enduring power of attorney** is a **power of attorney** that either comes into force when the person becomes **incompetent** or continues to be in force despite the person becoming **incompetent**. The Court may decide to appoint a trustee in situations where the attorney is not capable or willing to handle the dependent adult's estate or has acted improperly in the administration of the estate. The appointment of a trustee may also be necessary in cases where the **enduring power of attorney** is not broad enough to cover the administration of all of a senior's financial affairs.

Informal Trusteeship

The Court will generally not appoint a trustee if it is satisfied that the person's financial matters can be dealt with under the terms of an Informal Trusteeship or **enduring power of attorney**. **Informal trustees** can help seniors manage the income or benefits they receive from a number of different government programs: Old Age Security, Assured Income for the Severely Handicapped (AISH), Canada Pension Plan, or Veteran's Affairs. Family members, friends and others close to seniors often serve as their **informal trustees**. In cases where seniors have no property to manage but do require assistance in the management of income from these programs, the establishment of an Informal Trusteeship can meet their needs.

¹¹⁴ *Adult Guardianship and Trusteeship Act*, s. 46(7).

What role does an alternate trustee play?

The role of the **alternate trustee** is to take over the duties and responsibilities of the trustee in the event that the trustee becomes unwilling or incapable of performing his/her duties. The **alternate trustee** has the same decision-making powers and authority as the regular trustee and can be appointed when the Court makes or reviews a **trusteeship** order. Subject to the terms of the **trusteeship** order, if an **alternate trustee** is appointed, the alternate trustee must act as trustee without further Court proceedings if the original trustee has passed away or has become the subject of a **guardianship** or **trusteeship** order.¹¹⁵ However, if such an event occurs, the alternate trustee must notify the Court and provide evidence of the death or incapacity of the original trustee. The alternate trustee's duties may also become automatically effective if authorized to act as trustee during the temporary absence of the original trustee. It is a good idea to have an alternate trustee appointed at the same time that the trustee is appointed to ensure that the represented adult's interests will be fully protected.

What kinds of powers and authority does a trustee have in dealing with the property of a represented adult?

A trustee's authority to make decisions in relation to the estate of a represented adult comes from the **Surrogate Court** as well as the *Adult Guardianship and Trusteeship Act*.

Trustees have the general authority to:

- take possession and control of all the real and personal property of the represented adult, and

¹¹⁵ *Adult Guardianship and Trusteeship Act*, s. 53(3).

- to do anything in relation to the financial matters of the represented adult that the adult could do if they were capable of making the decisions themselves in a manner which is consistent with the Act or directions given by the Court.

It is however important to note that unless otherwise permitted by the Act, the regulations, or the **trusteeship** order, the Act prevents trustees (other than the **Public Trustee**), from selling, transferring, or encumbering the real property or purchasing real property on behalf of the represented adult, other than to register the **trusteeship** order against the title of the adult's real property.¹¹⁶

Though the Court may impose restrictions on a trustee's general authority to make decisions and take action on the estate of a represented adult, it seldom does so.

When the Court makes a **trusteeship** order it will list the kinds of "extra-authority" a trustee can exercise. A trustee can go back to Court to obtain the Court's permission to do things the trustee was not authorized to do under the terms of the original **trusteeship** order.

How must trustees exercise their powers and decision-making authority?

The *Adult Guardianship and Trusteeship Act* requires trustees to exercise their authority in the best interests of the represented adult and for the education, support and care of the represented adult.¹¹⁷

Trustees may also choose to exercise their authority for the benefit of the represented adult's spouse and children if the children are under 18 or over 18 and unable to earn a living because of a physical or

¹¹⁶ *Adult Guardianship and Trusteeship Act*, s. 55(2).

¹¹⁷ *Adult Guardianship and Trusteeship Act*, s. 56.

mental disability. Trustees may also act for the benefit of others if they first obtain the Court's authorization to do so.

How are trustees made responsible for the way in which they manage a represented adult's property?

There are a number of ways in which trustees are held accountable. All trustees are required to file with the Court an inventory and account of the assets and liabilities of the dependent adult's property at the time they are appointed or within six months of being appointed or becoming trustee. Every trustee, except the **Public Trustee**, is required to file a financial statement or account (their "accounts") with the Court indicating how they have managed the estate and to apply for an order of the Court passing or approving the accounts at least once every two years. The Court may also, at any time, direct the trustee to submit his/her accounts for examination and approval by the Court.¹¹⁸ The Court may decide, based on the size of the estate, the amount of income generated and the nature of the assets involved that frequent accounting is not warranted and allow a trustee to file or pass his/her accounts less often.

When the Court appoints the **Public Trustee** as trustee of a represented adult's estate it directs when the **Public Trustee** is required to submit a statement of its accounts for the Court's approval.

A trustee is also required to pass his/her accounts when his/she is discharged from office by the Court. Also, any person who has an interest in the matter may apply to the Court, at any time, for an order requiring a trustee to bring in and pass his/her accounts.¹¹⁹ Trustees

¹¹⁸ *Adult Guardianship and Trusteeship Act*, s. 63(4).

¹¹⁹ *Adult Guardianship and Trusteeship Act*, s. 63(3).

must follow the rules set out in the **Surrogate Court** Rules for the preparation and passing of accounts. If the represented adult passes away, the trustee must account to the legal representative (for example, the executor) of the estate of the represented adult and obtain a release from the legal representative. If the legal representative is not satisfied with the job the trustee has done and does not grant the release, an application can be made to the Court to pass the accounts. If the represented adult recovers and is able to resume the management of his/her affairs, the Court will terminate the **trusteeship** and the trustee will be required to account directly to the represented adult for how he/she managed the represented adult's affairs, and then obtain a release.

The Court also keeps an eye on the work that trustees do by reviewing **trusteeship** orders. **Trusteeship** orders which are issued on an expedited basis to deal with emergencies must be reviewed within 90 days of the date the order was issued. Represented adults, trustees or interested persons may apply to the Court, in accordance with the requirements of the regulations, for a **trusteeship** order review.¹²⁰ In fact, trustees are required to apply for a review in situations where a change in the needs, circumstances or **capacity** of the represented adult require a variation or termination of the order in the represented adult's best interests.

The process for applying for a review of a **trusteeship** order is similar to the process of applying for the initial **trusteeship** order. A review of a **trusteeship** order can also be conducted through a **desk procedure**.¹²¹ Applications for reviews are generally combined with applications to pass accounts. The trustee or the trustee's lawyer must

¹²⁰ *Adult Guardianship and Trusteeship Act*, s. 70.

¹²¹ *Adult Guardianship and Trusteeship Regulation*, s. 47.

be present in Court to answer questions about the accounts when the Court reviews them. When the Court reviews a **trusteeship** order, it may decide that the order should remain in force or it may decide to continue, amend, cancel, terminate the order or replace it completely on any terms or conditions it deems appropriate.¹²²

If the Court finds that a trustee has acted improperly it may discharge the trustee. Anyone may apply to the Court for an order discharging the trustee. A trustee may be discharged for any one of a number of reasons:

- the trustee has failed to act in accordance with a **trusteeship** order,
- the trustee has acted in an improper manner or in a manner that has endangered or may endanger the represented adult's estate, or
- the trustee has been guilty of a breach of trust.¹²³
- A trustee may also apply to the Court to be relieved of his/her duties and responsibilities if he/she is no longer willing or able to act as trustee.

In addition, on passing the accounts of a trustee, reviewing a **trusteeship** order or during an application for the discharge of a trustee the Court may hear a complaint or claim concerning the misconduct, neglect or default of a trustee. The Court may order the trustee to pay back the estate for the loss suffered as a consequence of the trustee's misconduct, neglect or default.

¹²² *Adult Guardianship and Trusteeship Act*, s. 70(4).

¹²³ *Adult Guardianship and Trusteeship Act*, s. 70(5).

Is it necessary to have a lawyer to apply for trusteeship orders, reviews of trusteeship orders or to handle the responsibilities of a trustee?

You should have a lawyer if you are applying for a **trusteeship** order in an emergency situation or if the application is likely to be disputed or to raise complex legal issues. However, in other situations it is possible to proceed without a lawyer.

The Office of the **Public Trustee** has prepared a package of information to guide people through the process of applying for **trusteeship** orders and reviews of **trusteeship** orders. You should contact your local **Public Trustee's** office to find out where you can pick up the information package, or you can access this information online at the Government of Alberta's website.¹²⁴

Preparing and submitting accounts to the Court can be a difficult and demanding business. It is a good idea to have a lawyer with a specialized knowledge of the law in this area help you with this process.

Who covers the costs of trusteeship applications?

Generally speaking, the estate of the represented adult is expected to cover these costs. The **Surrogate Court** can order the Crown (the government) to cover some of the costs associated with any application or report made to it under the Act.¹²⁵ In order for this to happen, the Court must be satisfied that it would pose an economic hardship for the Court to order the applicant, the represented adult or the estate of the represented adult to cover the costs. If you want to

¹²⁴ See online:

http://justice.alberta.ca/programs_services/public_trustee/dependent_adults/Pages/applying_yourself.aspx

¹²⁵ *Adult Guardianship and Trusteeship Act*, s. 115.

seek an order for costs against the Crown you must indicate this on the application form and provide evidence of hardship by filling in Part V of a form called the Application Information Summary.

What can seniors do if they have concerns about trusteeship applications or the way in which trustees are performing?

There are a number of things they can do. They can bring their concerns to the attention of the **Public Trustee** who may, in turn, raise the matter in Court in the context of a **trusteeship** application or take some other action—for example, initiate an application for review of a **trusteeship** order or the discharge of the trustee. Anyone who has a concern about a **desk procedure** can file a **request for hearing** and make his/her views known in Court at the hearing. Represented adults or those acting on their behalf can also:

- apply for reviews of **trusteeship** orders,
- apply to have the trustee's accounts reviewed by the Court, and
- apply for the discharge of the trustee.

They can make a complaint or claim concerning the misconduct, neglect or default of a trustee to the Court in the context of these proceedings and have the Court review the matter. It is a good idea for represented adults and other seniors to have a lawyer in these proceedings. If the represented adult or the person acting on their behalf cannot afford a lawyer they may be eligible for **Legal Aid**. **Legal Aid**'s normal application process and eligibility rules apply to these kinds of proceedings. **Legal Aid** is unlikely to provide legal assistance to anyone other than the represented adult or someone acting on the represented adult's behalf who wishes to initiate or intervene in a **trusteeship** proceeding. An applicant who cannot afford to cover the

cost of the proceeding can, however, try to obtain an order for costs against the Crown or the estate of the represented adult on the grounds of economic hardship.

E. Common Guardianship and Trusteeship Issues

Can guardianship and trusteeship orders be appealed?

Yes. A represented adult or someone acting on his/her behalf may launch an **appeal** of a **guardianship** or **trusteeship** order to the Court of Appeal to challenge the way in which the Court has interpreted the law in his/her case.¹²⁶ The Surrogate Court's findings about the facts in the case cannot be appealed.

Are co-decision-makers, guardians and trustees entitled to compensation for the services they provide?

Co-decision-makers and guardians are not entitled to compensation, however, trustees are entitled to be compensated for the time and effort they expend managing a represented adult's estate. The Court must authorize any compensation payment made to a trustee. The compensation paid to a trustee is drawn from the estate of the represented adult. Trustees are also entitled to recover any money they spend managing the estate of the dependent adult.¹²⁷

Does the Freedom of Information and Protection of Privacy Act apply to the Office of the Public Guardian and the Office of the Public Trustee?

Yes. The Office of the **Public Guardian** and the Office of the **Public Trustee** are public bodies under the *Freedom of Information and Protection of Privacy Act (FOIP)* and are therefore subject to the access

¹²⁶ *Adult Guardianship and Trusteeship Act*, s. 114.

¹²⁷ *Adult Guardianship and Trusteeship Act*, ss. 19, 37 and 66.

and privacy provisions of *FOIP*. This means that seniors who are under the **guardianship** of the **Public Guardian** and the **trusteeship** of the **Public Trustee** have the right to see their files. This right is not absolute. It is subject to a number of exceptions. The **Public Guardian** and the **Public Trustee** cannot, for example, give represented adults access to personal information in their files which concerns another person if the disclosure would constitute an unreasonable invasion of that person's privacy. The **Public Guardian** and the **Public Trustee** may also withhold information about the represented adult if they feel that the disclosure could reasonably be expected to threaten the represented adult's mental or physical health or the health of someone else. The **Public Guardian** and the **Public Trustee** must also comply with the standards set in *FOIP* for the collection, use and disclosure of the personal information of represented adults. Represented adults also have the right to ask the Information and Privacy Commissioner to review decisions made and actions taken by the **Public Guardian** and the **Public Trustee** concerning access requests and privacy matters.

V. Personal Directives and Enduring Powers of Attorney

A. Personal Directives

What is a personal directive?

A **personal directive** is a legal document which provides seniors and other adults with the means to plan for the time when they are incapable of making personal decisions for themselves. In a **personal directive**, a person may name one or more people to make health care and other kinds of personal decisions for them during the time when they are not mentally competent to do so. These individuals are known

as agents. The person making the **personal directive** (the "maker") can also indicate the areas in which they want their agents to make decisions for them and include instructions regarding the care and treatment they do and do not want to receive when they become **incompetent**. The *Personal Directives Act*, which became law on December 1, 1997, sets out legal guidelines for the preparation and **enforcement** of personal directives.

Why should seniors prepare personal directives?

There are a number of good reasons why seniors, and, in fact, all adults, should have personal directives. Personal directives enable seniors to exercise some control over what happens to them when they are either temporarily or permanently unable to make personal decisions for themselves. As noted earlier in this handbook, only a guardian, an agent named in a **personal directive** or a formal mental health patient's nearest relative has the legal authority to make health care and other personal decisions for a person who is not mentally competent.

If you have not prepared a **personal directive** and you become **incompetent** it is likely that your relatives and loved ones will be forced to go to the trouble and expense of obtaining a **guardianship** order in order to ensure that your personal needs and care are looked after. Personal directives enable seniors to choose the person(s) they want to act as their substitute decision-makers and indicate the kinds of decisions they want them to make on their behalf. Seniors who have not prepared personal directives and are placed under **guardianship** may not have control over any of these matters. A **personal directive** can also provide a valuable record of a senior's wishes regarding the care and treatment he/she wants or does not want. This record can help guide agents, guardians and others who are making decisions for

and providing services to ill or injured seniors. Doctors must pay attention to what a senior has said about his/her treatment preferences in a **personal directive**. The law requires doctors to respect the treatment wishes of an **incompetent** patient that the patient expressed when they were competent.

Can seniors be forced to prepare personal directives?

No. Each senior is free to decide whether to prepare a **personal directive** or not. Under the *Personal Directives Act*, it is against the law for institutions and other residential facilities to pressure seniors into making personal directives by denying them accommodation or threatening to terminate his/her accommodation if they do not do so.¹²⁸ Anyone who does this can be convicted of an offence and forced to pay a fine of up to \$10,000.

Who can make a personal directive?

Anyone 18 years of age and over who is capable of understanding the nature and effect of a **personal directive** may make a **personal directive**. All adults are presumed to be competent to make a **personal directive**.¹²⁹ In assessing whether a senior is competent to make a **personal directive**, the focus is on whether the senior understands what he/she is doing in making a **personal directive**. If the senior is appointing an agent in a **personal directive** the senior must understand that he/she is giving someone else the authority to make personal decisions for them while he/she is **incompetent**. The senior

¹²⁸ *Personal Directives Act*, s. 31.

¹²⁹ *Personal Directives Act*, s. 3.

need not necessarily understand the nature and effect of the decisions the agent is authorized to make.¹³⁰

Adults who are under a **guardianship** order may make personal directives but only about matters over which they continue to have decision-making authority. This means that people who have been made represented adults by the court cannot prepare a **personal directive** that addresses a matter covered by the **guardianship** order.¹³¹

What kinds of things can seniors include in a personal directive?

A **personal directive** may contain information and instructions concerning *any* personal matter. The term "personal matter" refers to any matter affecting a senior which is not financial in nature and includes health care matters, decisions concerning where a senior is to live and with whom, whether a senior is to participate in a social, educational or employment activities, and legal matters.¹³² Seniors must prepare another document called an **enduring power of attorney** in order to provide for the management of their finances when they are **incompetent**.

Seniors can include many different kinds of provisions in a **personal directive**. These include provisions where the senior:

- provides instructions about what kinds of decisions should be made on a senior's behalf in particular situations,
- names one or more people to act as a senior's agent(s) and spells out the scope of the agents' decision-making authority,

¹³⁰N. Golding, "Competence" in *Personal Directives Act: An Introduction*, Legal Education Society of Alberta, 1997 at 11.

¹³¹ *Personal Directives Act*, s. 4.

¹³² *Personal Directives Act*, s. 1(1).

- provides instructions on how agents should make decisions and how disputes between agents should be resolved,
- provides for agents to be compensated,
- names one or more individuals to determine when a senior lacks mental **capacity** and the **personal directive** comes into effect,
- specifies who should and should not be notified when the **personal directive** comes into effect,
- specifies who should have access to a senior's personal information when the senior is **incompetent**,
- provides for the review of decisions made by agents, and
- specifies when part or all of the **personal directive** is revoked. The maker can decide that the **personal directive** should be revoked on a certain date or when a certain event happens.¹³³

One thing a senior cannot do in a **personal directive** is to instruct an agent or anyone else to do something that is illegal.¹³⁴ A **personal directive** cannot be used, for example, to authorize assisted suicide or euthanasia. Instructions of this kind are legally invalid and cannot be implemented.

Can a personal directive be revoked or changed once it is made?

Yes. The maker can **revoke** or change a **personal directive** in whole or in part as long as he/she is mentally competent to do so. This can be done by specifying a date or event in the **personal directive** that will lead to its revocation, by making a new **personal directive** that contradicts the original (to the extent of the contradiction), or by making a new **personal directive** or document that indicates the

¹³³ *Personal Directives Act*, s. 7.

¹³⁴ *Personal Directives Act*, s. 7(2).

senior's intent to **revoke** the original **personal directive**.¹³⁵ It is a good idea for seniors to review and revise their **personal directives** on a periodic basis to ensure they continue to reflect their wishes and choices. A senior should definitely review his/her **personal directive** in the event of a divorce, remarriage, or death to ensure that the **personal directive** still reflects his/her wishes.

What kinds of formalities must be followed in preparing a personal directive?

A **personal directive** does not need to be written in a particular form or style. Seniors can, in fact, prepare several **personal directives** to address different procedural and personal matters. However, under the *Personal Directives Act*, each **personal directive** a senior makes must meet certain requirements in order to be legally binding: a **personal directive** must be

- in writing,
- dated,
- signed at the end by the person making it (the "maker") in the presence of a witness. If the maker is not physically able to sign the **personal directive** it can be signed by another person on the maker's behalf in the presence of the maker and a witness, and
- signed by the witness in the presence of the maker.¹³⁶

The *Personal Directives Act* includes a number of rules regarding who can sign a **personal directive** on behalf of a maker and who can witness the signing. A person named as an agent and the agent's spouse cannot witness a maker signing a **personal directive** nor sign the document on his or her behalf. As well, a person named as an

¹³⁵ *Personal Directives Act*, s. 8.

¹³⁶ *Personal Directives Act*, s. 5.

agent, the agent's spouse, the maker's spouse, the person who signed the **personal directive** on behalf of the maker and that person's spouse cannot act as witnesses.¹³⁷

What is the status of living wills, advanced directives or personal directives prepared before the Personal Directives Act came into force?

If you prepared a living will, advanced directive or **personal directive** before the *Personal Directives Act* came into force on December 1, 1997, you should prepare a new one which meets the requirements of the Act. Only personal directives prepared *on or after* this date are enforceable under the Act.¹³⁸ This does not mean that living wills, advanced directives or personal directives prepared before December 1, 1997, have no legal force or effect. As noted above, doctors and other service providers must respect the treatment wishes of **incompetent** patients which they expressed while they were competent. However, in order to ensure that your choice of agents and wishes and desires regarding your treatment and care are fully respected and your interests are fully protected under law you should prepare a new **personal directive** or re-issue or re-execute your old one in accordance with the *Personal Directives Act*.

When does a personal directive come into effect?

A **personal directive** comes into effect when the person who has made it is no longer competent to deal with the matters addressed in the **personal directive**. A person is considered to be **incompetent** or to lack **capacity** when the person or persons designated in the **personal directive** to determine the issue of **capacity** make a written

¹³⁷ *Personal Directives Act*, s. 5(3).

¹³⁸ *Personal Directives Act*, s. 2.

declaration to this effect after consulting a physician or psychologist. In cases where the **personal directive** does not name someone to determine the maker's **capacity** or the person named in the **personal directive** is unable or unwilling to make a determination or cannot be contacted, the **personal directive** comes into effect when two service providers make a written declaration that the maker lacks **capacity**. One of the two service providers who make this determination must be a physician or psychologist.¹³⁹ The *Personal Directives Act* requires physicians and psychologists who have been consulted in the making of written declarations or have made written declarations regarding a maker's lack of **capacity** to keep a written record of the determination.¹⁴⁰ The Act also requires those who have made the determination to provide copies of the written declaration to the maker, the maker's **agent** and any other person designated in the **personal directive**. The maker has the right to apply to Court for a review of the determination.

Who can seniors name as his/her agent in a personal directive?

It is important to note that you do not have to appoint anyone to make decisions for you when you make a **personal directive**. However, if you do decide to take this course you should ensure that the people you pick as your **agents** are willing and able to take on this responsibility. A person cannot be forced to become a senior's **agent**. **Agents** must be 18 years of age and over and be mentally competent when the **personal directive** comes into effect, otherwise the **agent** will not have authority to act on a senior's behalf.¹⁴¹ You should also ensure that the people you name as **agents** are familiar with your preferences and wishes and would be comfortable carrying them out. Seniors can

¹³⁹ *Personal Directives Act*, s. 9.

¹⁴⁰ *Personal Directives Act*, s. 9(3).

¹⁴¹ *Personal Directives Act*, s. 12.

appoint the **Public Guardian** as his/her **agent** as well as rabbis, other clergy, and service providers. However, naming a physician, lawyer or other kind of service provider as an **agent** may not be wise because the service provider may end up having to make a decision which is in conflict with his/her profession or position.¹⁴² If you decide to name the **Public Guardian** as your **agent**, you must also provide the **Public Guardian** with a copy of your **personal directive** as well as other personal information, as required by the regulations.¹⁴³ If you do decide to name a service provider as your **agent** you must provide the name of the person you have chosen in your **personal directive**. You cannot just say that you want your doctor or lawyer to act as your agent. This requirement is in place to clarify the choices seniors have made and thus protect their interests.

You can name one agent to make all decisions for you plus an alternate agent to take over in case the agent dies or is ill or temporarily absent. You can also name more than one agent to make particular kinds of decisions for you such as health care decisions or different agents to make different kinds of decisions. If your agents cannot agree on a particular decision the decision of the majority of the agents will be the one that is implemented unless you direct otherwise in your **personal directive**.¹⁴⁴ You may decide to include a provision in your **personal directive** appointing another person to resolve disputes among agents or specify some other means of resolving disputes. You can also ask the Court of Queen's Bench to make the decision in cases

¹⁴²Government of Alberta, *Choosing now for the future - A guide to writing your personal directive* at 10.

¹⁴³ *Personal Directives Act*, s. 7.1, *Personal Directives Regulation*, s. 2.

¹⁴⁴ *Personal Directives Act*, s. 16.

where a majority of agents cannot agree on what decision should be made.¹⁴⁵

What are the duties and responsibilities of agents?

The agent or agents named in a **personal directive** have the authority to make all personal decisions on behalf of a senior unless a senior provides otherwise in the **personal directive**.¹⁴⁶ Seniors can decide to restrict the decision-making authority of their agents to specific issues or areas by saying so in the **personal directive**. However, agents cannot make decisions in a number of critical areas unless a senior has given them the clear authority to do so in the **personal directive**. An agent cannot, for example, authorize **psychosurgery, consent** to the non-therapeutic sterilization of seniors or the transplantation of a senior's organs or tissue unless the **personal directive** says the agent can do these things.¹⁴⁷

In making a decision for a senior, agents must try to step into the shoes of the senior and make the decision the senior would make if they were competent. Agents are required to consult the maker of the **personal directive** before they make decisions.¹⁴⁸ They are also required to follow any instructions contained in a **personal directive** which are relevant to the situation. If there are no clear instructions which apply to the situation at hand they must make the decision they believe the senior would make based on their knowledge of the senior's values, beliefs and wishes. If the agents do not know the

¹⁴⁵ *Personal Directives Act*, s. 27(1)(f).

¹⁴⁶ *Personal Directives Act*, s. 11.

¹⁴⁷ *Personal Directives Act*, s. 15.

¹⁴⁸ *Personal Directives Act*, s. 13.

senior's values, beliefs and wishes, they must make the decision that they believe to be in the best interests of the senior.¹⁴⁹

The *Personal Directives Act* requires agents to keep a record of the decisions they make on behalf of seniors.¹⁵⁰ This record must be maintained during the period of time that the senior lacks **capacity** and for at least two years after the agent's decision making authority ends and can be requested by the senior, the senior's lawyer and others involved in making decisions for the senior. Agents may also provide a copy of the record to others if they think it is in the best interests of seniors to do so. However, a senior may restrict access to this record by including a provision to this effect in the **personal directive**.

Are decisions made by agents subject to review?

Decisions made by agents are not automatically subject to review. However, seniors can build a review process into a **personal directive**. As well, seniors and others may ask the Court of Queen's Bench to review a decision made by an agent by making an application to the Court. The Court has the authority to **revoke**, confirm or change a decision made by an agent and make any other order it considers appropriate that is not inconsistent with a **personal directive**.¹⁵¹

When does an agent's authority to make personal decisions for a senior end?

It can end in a number of different ways. An agent's authority ends when the maker regains and has **capacity** to deal with the matter over which the agent has authority. It also ends when the **personal directive** is revoked, the maker dies, the Court appoints a guardian to

¹⁴⁹ *Personal Directives Act*, s. 14(3).

¹⁵⁰ *Personal Directives Act*, s. 17.

¹⁵¹ *Personal Directives Act*, s. 27(1).

take over the agent's decision-making authority or determines that the entire **personal directive** or the part concerning the agent is no longer valid.¹⁵² An agent can also decide that they no longer want to act as the maker's agent and voluntarily relinquish decision-making authority.

What are the responsibilities of service providers in relation to personal directives?

Under law, doctors and other service providers must obtain the **consent** of their patients or clients before they provide services to them. However, when a client or patient lacks **capacity** to provide **consent** and a **personal directive** is in effect, the service provider must be guided by the contents of the **personal directive** as well as the *Personal Directives Act*. It is therefore advisable for service providers to ask all their patients or clients whether they have prepared personal directives and to discuss the contents of personal directives with them. It is also advisable for seniors to tell their doctors and other service providers that they have a **personal directive** and to provide them with copies of it.

Service providers must carefully read and review the contents of personal directives. If the client or patient has designated an agent or agents to make decisions for them concerning the provision of a particular service, the service provider must follow any clear instructions he/she provides.¹⁵³ Service providers must check the identity of agents and ensure that they have the authority to make the decision in question before acting on their instructions.¹⁵⁴

If the **personal directive** does not name an agent to make decisions for the maker or the agent designated in the **personal directive** is unable

¹⁵² *Personal Directives Act*, s. 10.

¹⁵³ *Personal Directives Act*, s. 19(1)(a).

¹⁵⁴ *Personal Directives Act*, s. 23.

or unwilling to make a personal decision or cannot be contacted, the service provider must follow any clear instructions in the **personal directive** relating to the decision in question. It is up to the service provider to make every reasonable effort to contact and obtain instructions from agents named in a **personal directive**. In cases where an agent has not been designated and the **personal directive** does not contain any clear or relevant instructions the service provider must make every reasonable effort to contact the maker's nearest relative to let them know what is happening.¹⁵⁵

Despite the fact that a determination of incapacity has been made, service providers have a duty to continually re-assess the **capacity** of their patients or clients each time they intend to provide a personal service to them. If a service provider believes that the patient or client continues to lack **capacity** they can provide the personal service in accordance with the instructions provided in the **personal directive** and the requirements of the *Personal Directives Act*.¹⁵⁶ However, if the service provider believes that the client or patient has regained the **capacity** to make personal decisions, the service provider must notify the agent before acting on the client or patient's instructions. If the agent has no objection, the service provider can act on the patient or client's instructions and provide the service in question.¹⁵⁷ If the agent objects, the service provider cannot provide the service unless the Court supports the service provider's view that the patient or client is competent. The patient or client, the service provider or any other person can apply to Court and ask the Court to make a determination on this issue.

¹⁵⁵ *Personal Directives Act*, s. 19(1)(b).

¹⁵⁶ *Personal Directives Act*, s. 21.

¹⁵⁷ *Personal Directives Act*, s. 10.1(2).

As noted earlier in this handbook, physicians can provide medical services without obtaining the **consent** of a patient in order to save the life or preserve the health of the patient. The *Personal Directives Act* also gives health practitioners the authority to provide emergency medical services without obtaining **consent** in cases where the patient has made a **personal directive** but the **personal directive** cannot be located, does not designate an agent or provide clear instructions or the person designated as the agent is unable or unwilling to make the decision or cannot be contacted.¹⁵⁸

Can agents and service providers be held liable for mistakes they make carrying out their duties and responsibilities?

Under the *Personal Directives Act*, agents and service providers cannot be held liable if they act in good faith and in a reasonable manner in attempting to fulfill their responsibilities. They also cannot be held liable if they acted in good faith in following the instructions contained in a **personal directive** without knowing that the maker had changed or revoked the **personal directive** or revoked the authority of the agent.¹⁵⁹

What can seniors do if they have concerns about the way a personal directive is being interpreted or administered?

Seniors can make a written complaint to their local Public Guardian's office if they believe that the agent is not following the **personal directive** or failing in their duties, and the failure is likely to cause mental or physical harm to the maker.¹⁶⁰ The **Public Guardian** is responsible for administering the *Personal Directives Act*. They can also apply to Court and ask the Court to make a determination regarding

¹⁵⁸ *Personal Directives Act*, s. 24.

¹⁵⁹ *Personal Directives Act*, s. 28.

¹⁶⁰ *Personal Directives Act*, s. 24.2.

the validity of a **personal directive**, the **capacity** of the maker, the authority of an agent as well as other matters.

Do seniors need to consult a lawyer when they prepare personal directives?

No. Though it may be advisable to consult a lawyer or have a lawyer draw up a **personal directive** in order to ensure that your wishes and choices are clearly expressed, it is not necessary to do so in order to prepare a valid **personal directive**. The Public Guardian's office has prepared a number of guidebooks to help people prepare personal directives. This material contains a number of models seniors can follow in drawing up their own personal directives. As well, a number of senior's organizations in Alberta help seniors prepare personal directives. Your local Public Guardian's office can tell you which organization in your area provides this service.

B. Enduring Powers of Attorney

What is a power of attorney?

A **power of attorney** is a legal document which enables one person to give another person the authority to deal with their property and financial affairs. The person granting the **power of attorney** is called the "**donor**" and the person who is given the authority to deal with the donor's financial affairs is referred to as the "attorney." A person must be mentally competent to grant a **power of attorney**—that is—they must understand what they are doing in giving someone else the authority to handle their financial affairs. If the **donor** becomes mentally **incompetent** after making a (regular) **power of attorney**, the **power of attorney** becomes invalid and the attorney no longer has the legal authority to handle the donor's financial affairs.

Powers of attorney can be extremely useful devices for seniors. Seniors can appoint attorneys to help them deal with their financial affairs when they are bed-ridden or too physically frail to handle matters on their own. Powers of attorney can also be useful in other contexts; for example, when seniors leave the country on extended vacations and need someone to look after their property and finances for them while they are gone.

What is an enduring power of attorney?

One of the key features of a **regular power of attorney** is that it stops being valid when the **donor** becomes mentally **incompetent**. The key feature of an **enduring power of attorney** is that the donor's loss of **capacity** does not cancel it. There are, in fact, two kinds of enduring powers of attorney. The first kind comes into effect when it is made and includes a provision stating that it is to remain in effect even if the **donor** loses **capacity**.¹⁶¹ The second kind of **enduring power of attorney** only takes effect when the **donor** becomes **incompetent** or some other event specified in the **enduring power of attorney** occurs.¹⁶² This kind of **power of attorney** is referred to as a "**springing power of attorney**."

In 1991, the province passed the *Powers of Attorney Act* to enable Albertans to prepare and implement enduring powers of attorney.

Why should seniors prepare enduring powers of attorney?

There are a number of good reasons why seniors, and, in fact, all adults, should have enduring powers of attorney. Enduring powers of attorney enable seniors to exercise some control over what happens to their property and finances when they are either temporarily or

¹⁶¹ *Powers of Attorney Act*, s. 2(1)(iii)(a).

¹⁶² *Powers of Attorney Act*, s. 2(1)(iii)(b).

permanently incapable of handling these matters for themselves. Only attorneys appointed under enduring powers of attorney and trustees appointed under **trusteeship** orders have the authority to deal with a person's financial affairs when the person is **incompetent**. If you have not prepared an **enduring power of attorney** and you become **incompetent** your family and loved ones will be forced to go to the expense and trouble of obtaining a **trusteeship** order in order to ensure that someone will be responsible for managing your financial affairs. Enduring powers of attorney also enable seniors to:

- pick the individuals or institutions they want to handle their financial affairs,
- restrict the scope of their attorney's authority, and
- provide other directions to attorneys in relation to the management of their estate.

A senior who does not have an **enduring power of attorney** and is placed under **trusteeship** does not have the ability to decide any of these matters.

Who can make an enduring power of attorney?

Any adult who is capable of understanding the nature and effect of the **enduring power of attorney** can make one.¹⁶³ Different levels of **capacity** may be required to execute different kinds of powers of attorney and enduring powers of attorney. As noted earlier in this handbook, the concept of legal competence is a slippery one. A person may be competent to make some kinds of decisions but not be considered legally competent to make other kinds of choices or decisions which are more complicated in nature. Consequently, a

¹⁶³ *Powers of Attorney Act*, ss. 2 and 3.

senior may be capable of understanding the significance of making a **power of attorney** or **enduring power of attorney** which is simple and straightforward in nature—for example—one which grants an attorney the authority to do anything the **donor** could lawfully do. At the same time, the senior may not be competent to make an **enduring power of attorney** which includes more complex directions concerning the donor's property and finances.

Who can seniors appoint as their attorneys under enduring powers of attorney?

They can appoint anyone who is an adult at the time the **enduring power of attorney** is executed and is competent to do the job.¹⁶⁴

Seniors can appoint one or more attorneys. They can also appoint a financial institution to serve as their attorney. They cannot, however, appoint the **Public Trustee** as their attorney. You should think carefully about who you pick as your attorney and discuss the matter with the person or persons concerned to see if they are willing serve as your attorney. The attorney or attorneys you appoint should be capable of handling your financial affairs and willing to take on the responsibility. They should also be people you can trust to act in your best interests.

What kinds of legal formalities govern the preparation of enduring powers of attorney?

Enduring powers of attorney must be:

- in writing,
- dated, and
- signed by the **donor** in the presence of a witness and signed by the witness in the presence of the **donor**. If the **donor** is

¹⁶⁴ *Powers of Attorney Act*, s.2(2).

physically unable to sign, another person can sign for him/her at the donor's direction in the presence of both the **donor** and a witness. An **enduring power of attorney** must also contain a statement indicating that it is either to take effect when the **donor** becomes mentally **incompetent** or that it is to continue in effect in the event that the **donor** loses **capacity**.¹⁶⁵ ***This requirement is crucial.*** A document is not an **enduring power of attorney** unless it includes this statement.

The *Powers of Attorney Act* includes a number of rules regarding who can sign an **enduring power of attorney** on behalf of a **donor** and who can act as a witness. A person named as an attorney and the attorney's spouse cannot witness a **donor** signing an **enduring power of attorney**.¹⁶⁶ They also cannot sign the document for the **donor**. As well, the donor's spouse, the person who signed the **enduring power of attorney** on behalf of the **donor** and that person's spouse cannot act as witnesses.¹⁶⁷ These rules are in place to ensure that enduring powers of attorney are properly executed and that seniors are not being coerced into handing over control over the management of their financial affairs to someone else.

What kinds of provisions can seniors include in an enduring power of attorney?

There are a number of provisions which must be included in an **enduring power of attorney**. As noted above, an **enduring power of attorney** must include:

¹⁶⁵ *Powers of Attorney Act*, s. 2(1).

¹⁶⁶ *Powers of Attorney Act*, s. 2(3).

¹⁶⁷ *Powers of Attorney Act*, s. 2(4).

- A provision indicating that it is to remain in force if the **donor** becomes **incompetent** or is to spring into effect if this or some other event happens.
- A provision indicating the attorney who they have chosen to serve as their attorney.
- A provision explicitly granting attorneys the power to deal with land must be made part of the **enduring power of attorney** if seniors want their attorneys to have this power. This is necessary in order for the **enduring power of attorney** to be registered with the Land Titles office and for attorneys to deal with the Land Titles system.

Seniors can choose to include a number of other kinds of provisions in an **enduring power of attorney**. Unless an **enduring power of attorney** states otherwise, an attorney has very broad powers to deal with the donor's estate and may use the estate for the maintenance, education, benefit and advancement of the donor's spouse and dependent children.¹⁶⁸ Seniors may decide to restrict the authority of attorneys by including a provision to this effect in the **enduring power of attorney**. They may, for example, direct their attorneys to use their estate only for the benefit of themselves and their spouses. The following kinds of provisions may also be included in an **enduring power of attorney**:

- A provision appointing an alternate attorney to take over in the event that the people named as attorneys are unable or unwilling to take on the responsibility.

¹⁶⁸Philip Renaud, "Changes to the *Powers of Attorney Act*" in *Personal Directives Act: An Introduction* (Legal Education Society of Alberta, 1997) at 1.

- A provision specifying who is to make the determination that the **donor** is **incompetent** and the criteria and process to be used in making this determination.¹⁶⁹
- A provision providing for attorneys to be compensated for the time they spend managing the donor's estate.

When do springing powers of attorney come into effect?

They come into effect when the **donor** becomes **incompetent** or when some other "triggering" event identified in the **power of attorney** occurs. An **enduring power of attorney** may name one or more people to make the decision about the donor's **capacity**. The **enduring power of attorney** comes into effect when these people make a written declaration that the **donor** lacks **capacity**.¹⁷⁰ In cases where the **enduring power of attorney** does not name anyone to make this determination or the person named dies before the **donor** becomes **incompetent** or is unable or incapable of determining whether the **donor** lacks **capacity**, the **enduring power of attorney** comes into effect when two doctors make a written declaration that the **donor** lacks **capacity**.¹⁷¹

Can an enduring power of attorney be revised or revoked once it is made?

Yes, as long as the **donor** continues to have the **capacity** to revise or **revoke** it.¹⁷² It is a good idea for seniors to periodically review and revise enduring powers of attorney to ensure that they continue to reflect their wishes and choices regarding the management of their

¹⁶⁹ *Powers of Attorney Act*, s. 5(2).

¹⁷⁰ *Powers of Attorney Act*, s. 5(2).

¹⁷¹ *Powers of Attorney Act*, s. 5(4).

¹⁷² *Powers of Attorney Act*, s. 13.

estate. A **power of attorney** should also be reviewed upon divorce, remarriage, or death.

When is an enduring power of attorney terminated?

An **enduring power of attorney** is terminated when any of the following events occur:

- A mentally competent **donor** revokes the **enduring power of attorney**.
- The attorney obtains an order from the **Surrogate Court** allowing them to relinquish their responsibilities as attorney.
- A termination order is granted by the **Surrogate Court** upon application by an interested person.
- A **trusteeship** order is granted with regard to the **donor**.
- The **donor** or attorney dies.
- A **trusteeship** order is granted with regard to the attorney.¹⁷³

The **Surrogate Court** terminates the **enduring power of attorney**. Under the *Powers of Attorney Act*, anyone can apply to Court for an order terminating the **enduring power of attorney**. The Court may grant the order if it determines that it would be in the best interests of the **donor** to do so.¹⁷⁴

What can seniors do if they have concerns about the way an attorney is performing their duties and responsibilities?

They can apply to Court for an order terminating the **enduring power of attorney**. As well, the **donor**, the donor's personal representative or a trustee of the donor's estate may apply to Court for an order

¹⁷³ *Powers of Attorney Act*, s. 13.

¹⁷⁴ *Powers of Attorney Act*, s. 11(3).

directing the attorney to bring their accounts into Court and have the Court review and approve them.¹⁷⁵ If the **donor** is not able to make reasonable judgements about matters affecting the estate, other people can make this application.

If seniors cannot afford to hire a lawyer to represent them in these proceedings, they may be eligible for **Legal Aid**. **Legal Aid**'s normal eligibility requirements apply to these kinds of proceedings. However, **Legal Aid** is not likely to support a Court application brought by someone other than the **donor** or someone acting on their behalf.

Do seniors need to consult a lawyer when they prepare an enduring power of attorney?

No. The law used to require donors to consult a lawyer before signing an **enduring power of attorney**. Lawyers were also required to attach a certificate to the **enduring power of attorney** indicating that they had advised the **donor** of the legal implications of the **enduring power of attorney** and that the **donor** had signed it voluntarily. These safeguards were in place to ensure that seniors and others were not being pressured into preparing enduring powers of attorney and fully understood the consequences of doing so.

Though it is no longer necessary to consult a lawyer before preparing an **enduring power of attorney** it is a good idea to do so. Lawyers can help you build certain safeguards into the **enduring power of attorney**. They can ensure that the wording of the **enduring power of attorney** reflects your wishes regarding the scope of an attorney's powers. They can also ensure that the **enduring power of attorney** is drafted in such

¹⁷⁵ *Powers of Attorney Act*, s. 10.

a way that it comes into effect only when it is supposed to, that is, when you, the **donor**, are seriously incapacitated.¹⁷⁶

¹⁷⁶Office of the Public Trustee, *Enduring Powers of Attorney*, June 1, 1999 at 2.

Chapter Four: Consumer Protection

I. Introduction

Many seniors have accumulated large amounts of money to support themselves in their retirement and to leave as a bequest to their children and loved ones. Many live alone and are more open to and trusting of strangers and thus vulnerable to con artists and others who are out to take advantage of them and separate them from their money. For these and other reasons, seniors are often the targets of various kinds of consumer fraud and scams:

Prize scams:

The seniors are contacted by phone and told that they have won a car or some other big prize and must pay a "gift tax", duty or some other fee in order to collect the prize. The seniors pay as requested but never receive the prize.

Recovery scams:

These scams target seniors who have been victimized by prize scams and other kinds of **telemarketing fraud**. The senior is contacted by someone claiming to be a police officer, lawyer or other public official who tells him/her that the money they have lost has been recovered and the con artist who defrauded them has been caught. The caller tells the senior that in order to get the money back he/she must pay a fee. The senior pays and is defrauded again.

Pigeon Drop:

There are a number of different versions of this "sting."¹⁷⁷ Generally, the senior is approached by two strangers who claim that they have found a large amount of money. They tell the senior that they are willing to share the money with him/her if he/she, in turn, pays them a sum of money to indicate his/her faith in them and commitment to the deal. The senior forks over the money and the strangers take off without fulfilling their part of the bargain.

Home improvement scams:

A person shows up at a senior's door claiming to be a contractor. He/she says that he/she just happened to be working in the neighbourhood or passing by the senior's home and noticed that the senior's home was in need of immediate repair. He/she offers to do the job at a great saving, pressure the senior into signing a contract and ask for an advance to purchase materials and begin the work. He/she then either takes off with the senior's money, fails to complete the work or do such a poor job that the work has to be re-done.

Medical scams:

Companies contact seniors by telephone and mail promoting "miracle" medical products and treatments. They cite phony lab tests and make outrageous claims about the curative properties of what they are selling in order to scam seniors out of their money.

¹⁷⁷Edmonton Police Service, "A Special Message to Senior Citizens" at 11.

Charity scams:

A person shows up at a senior's door soliciting donations for a charity. The charity is not a legitimate one. The senior makes out a cheque to the person and the person pockets the money.

There are a number of ways to protect yourself from these and other kinds of scams:

- **Never hire someone to do home repairs for you who just shows up at your door.**¹⁷⁸ A legitimate contractor will not pressure you into signing a contract without having you first read it carefully and consulting a lawyer or other advisor. The best way to find a contractor who is honest and does good work is by getting recommendations from your friends, neighbours and family members who have had similar work done. You should get at least three estimates from different contractors and check the work they have done for others to ensure that it is high quality. The estimates should be detailed and in writing.
- **Check out the contractor's qualifications and track record before you enter into a contract.** The **Better Business Bureau** can tell you if it has received complaints about the contractor from other consumers. You should also check with the Consumer Services Division of Alberta Government Services to see if the contractor is properly licensed and **bonded**. Contractors who seek work away from their normal place of business or have discussed or finalized a contract in the home of

¹⁷⁸Better Business Bureau, *Opportunists Knock - How to Protect Yourself From: Prize Scams, Insurance/Financial Scams, Medical Scams, Charity Scams, Home Repair Scams*.

- a consumer and received a payment before the work is complete must be licensed under the *Fair Trading Act*. They must also be **bonded**. The Consumer Services Division can be reached toll free in Alberta at **1-877-427-4088**.
- **Get a written contract.** Oral contracts can be very difficult to enforce. If anything goes wrong, you will be in a better position to make the contractor or supplier live up to their obligations if they are clearly spelled out in a written contract.
 - **Check out whether a medical product, charity or business is a legitimate one.** Legitimate charities are registered with Revenue Canada and give out official tax receipts. If you have doubts about the legitimacy of a particular charity ask to see the charity's charitable status number. It should be printed on the receipt provided by the canvasser. You can also call the **Better Business Bureau** to check on the charity. If you have doubts about whether the person soliciting donations is a legitimate representative of the charity, call the charity and make enquiries. You can also ask for the charity's address and mail in a donation rather than give a cheque to the canvasser. Make sure that your cheque is made out to the charitable organization and not to any individual. The **Better Business Bureau** can give you information about specific businesses and products to help you make informed consumer choices.
 - **Protect yourself against telemarketing fraud:** Prize scams and recovery scams are forms of **telemarketing fraud**. Though most telemarketers operate honestly and within the law, many con artists are now using the phone to defraud Canadians. Seniors appear to be a favourite target for this kind of crime. Under

Canada's *Competition Act*, it is a criminal offence to make false or misleading representations in order to sell a product or promote a business interest. It is also against the law to operate a contest or game where the delivery of a prize is, or is represented to be, conditional on the payment of a fee or some other form of advance payment. Requiring contestants to pay fees before they can collect their prize or make long distance calls on 1-900 lines in order to participate in a game and claim their prize is thus against the law. It is also illegal to withhold information regarding the approximate value of the prize and a contestant's chances of winning.

There are a number of ways of protecting yourself against **telemarketing fraud**. The *Competition Act* requires all telemarketers to disclose, at the beginning of the call, the purpose of the call, the name of the company or individual the caller is representing and the type of product or business interest being promoted.¹⁷⁹ If you have suspicions about a particular caller ask for this information. If the call does not sound legitimate hang up the phone. If the caller tells you that you have won a prize but must pay a fee or make some other kind of payment in advance to get it, you should also hang up the phone. It is also wise *not* to give out your credit card number or bank card number over the phone unless you are absolutely sure that the caller represents a legitimate business or charity.

If you or someone you know has been a victim of this crime you should report the matter to the Competition Bureau. The Competition Bureau is responsible for investigating complaints and prosecuting offenders. The Competition Bureau can be reached toll free at **1-800-348-5358**.

¹⁷⁹ *Competition Act*, s. 52.1.

Telemarketing fraud can be a very difficult matter for seniors and their loved ones to deal with. There are a number of organizations which can provide help.

PhoneBusters, a national organization operated by the Ontario Provincial Police, provides assistance to those who have been victimized. **SeniorBusters** is a group of volunteers who work with **PhoneBusters** to help seniors who have been victims of this crime. You can reach both organizations at the following toll free number:

1-888-495-8501

Remember, if it is too good to be true, it probably is!

The remainder of this section discusses some of the legal rights and remedies consumers have under Alberta's *Fair Trading Act*.

II. Consumer Rights and Remedies Under the Fair Trading Act

What is the Fair Trading Act?

The *Fair Trading Act* is consumer protection legislation, which replaced seven other pieces of legislation which regulated **unfair trade practices**, collection practices, consumer credit transactions, direct sales, the licensing of trades and businesses, public auctions and wage assignments. The *Fair Trading Act* deals with these matters as well as other issues of concern to consumers such as time share promotion and contracts, credit and personal reporting and consignment motor vehicle sales. It gives consumers greater rights to sue suppliers, manufacturers and others when they have been treated unfairly. It also includes a broader range of **enforcement** tools and penalties

which are designed to curb unfair trade practices and protect consumers.

What kinds of consumer transactions are covered by the Fair Trading Act?

The Act covers a broad range of transactions involving the supply of goods or services to consumers. The Act applies to purchases, leases, gifts, contests and other arrangements as well as to agreements for the supply of goods or services.

The Act regulates the way in which "suppliers" do business with consumers. A "supplier" is defined in the Act as any individual who, in the course of that individual's business, provides goods or services to consumers, manufactures, assembles or produces goods, promotes the use or purchase of goods or services, receives or is entitled to receive money or other consideration for the provision of goods or services and includes the salespeople, employees, representatives or agents of these individuals.¹⁸⁰ The term "goods" refers to any personal property that is used primarily for personal, family or household purposes, a voucher for goods or services or a new residential home including mobile homes and other kinds of dwellings which are not attached to land.¹⁸¹ "Services" refers to any service offered or provided primarily for personal, family or household purposes and includes home renovations and repairs and membership in any for-profit organization or business, the right to use property under a time share contract, and any credit agreement.¹⁸²

¹⁸⁰ *Fair Trading Act*, s. 1(1)(l).

¹⁸¹ *Fair Trading Act*, s. 1(1)(e).

¹⁸² *Fair Trading Act*, s. 1(1)(k).

What is an "unfair practice" under the Act?

The Act prohibits suppliers from using "**unfair practices.**" It also gives consumers certain legal rights and remedies if they have been subjected to **unfair practices.** The Act defines many different kinds of scams and unscrupulous business dealings as **unfair practices.**

Examples of **unfair practices** include:

- Putting undue pressure on a consumer to enter into a consumer transaction (sale).
- Taking advantage of a consumer's inability to understand the character, nature, language or effect of the transaction.
- Charging a price for goods or services that grossly exceeds the price at which similar goods or services are readily available without informing the consumer of the difference in price and the reason for the difference.
- Charging a price for goods or services that is more than 10%, to a maximum of \$100, higher than the estimate given for those goods or services, unless the consumer has expressly consented to the higher price before the goods and services are supplied or if the consumer requires additional or different goods and services, the consumer and the supplier agree to amend the estimate in a consumer agreement.
- A supplier entering into a transaction when they know or ought to know that the consumer is unable to receive any real benefit from the goods or services—for example, selling a \$750 power vacuum to a senior who lives in a nursing home.
- A supplier entering into a transaction when he/she knows or ought to know that there is no reasonable probability that the

consumer is able to pay full price for the goods or services—for example, selling an expensive luxury item to a senior who is on a fixed income.

- Indicating that goods or services have sponsorship, approval, characteristics, ingredients, uses or attributes that they do not have.
- Saying that goods are new when they are used or reconditioned or, conversely, indicating that goods have a particular history when they do not—for example, representing goods as antiques when they are not antiques.
- Making a representation that a part, repair or replacement is needed or desirable when it is not—for example, a contractor telling a senior that the senior's home is in dire need of a new roof when this is not the case.
- Providing an estimate of the price of goods or services if the goods or services cannot be provided at that price.¹⁸³

There are many other practices defined as unfair in the *Fair Trading Act*. Please review section 6 of the *Act* for further examples.

In order for the provisions of the Fair Trading Act to apply to these and other kinds of **unfair practices**, there must be some connection between the practice and the province of Alberta. The Act applies if either the supplier or consumer involved in the **unfair practice** is a resident of Alberta, the offer or acceptance was made in or sent from

¹⁸³ *Fair Trading Act*, s. 6.

Alberta or the **unfair practice** was made or received in Alberta and involved a representative of a supplier.¹⁸⁴

What can consumers do if they have been subjected to an unfair practice?

There are a number of things they can do. They can try to settle the dispute informally on their own. If this does not work, they can try engaging the services of professional negotiators or mediators who specialize in settling consumer disputes. The call centre at the Consumer Services Division of Alberta Government Services can provide you with the names of agencies and associations that provide this kind of service. The Consumer Services Division can be reached toll free in Alberta at **1-877-427-4088**.

Consumers can also sue suppliers who have engaged in **unfair practices**. Under the *Fair Trading Act*, a consumer who has suffered damage or loss as a result of an **unfair practice** can sue the supplier in the Court of Queen's Bench. If the Court finds that the way in which the consumer was dealt with constitutes an **unfair practice** it can do a number of things. It can order the supplier to pay damages to the consumer to cover the consumer's losses. It may also award **punitive damages** to the consumer if it feels that the way the supplier acted was particularly despicable.¹⁸⁵ The Court can also make an order for **restitution** of property or funds, cancel or rescind the consumer transaction, order the supplier to fulfill his/her obligations under a contract or grant an injunction prohibiting the supplier from engaging in the **unfair practice**. If the amount being claimed is \$25,000 or less, the action can be brought in Provincial **Civil Claims Court** rather than in the Court of Queen's Bench.

¹⁸⁴ *Fair Trading Act*, s. 5.

¹⁸⁵ *Fair Trading Act*, s. 7.2.

Consumers can also band together to try and stop a supplier who is engaging in or has engaged in an **unfair practice**. The *Fair Trading Act* enables a group of consumers or a consumer organization to bring an action against a supplier in the Court of Queen's Bench to obtain an order prohibiting the supplier from engaging in an **unfair practice**.¹⁸⁶

Consumers can also make a complaint about the way they have been dealt with to a public official known as the Director of Fair Trading. The Director of Fair Trading has broad powers under the Act and can do a number of things to try and protect the rights and interests of consumers. The Director can, with the **consent** of a consumer and on the consumer's behalf, sue a supplier who has engaged in an **unfair practice** if they think it is in the public interest to do so.¹⁸⁷ The Director must be notified when consumers and consumer organizations take court action against suppliers for **unfair practices** and can apply to Court to become a party to and participate in the proceedings. In order to register a complaint or raise a question, call the Consumer Services Division at **(780) 427-4088** in Edmonton. If you live outside of Edmonton, the toll free number is **1-877-427-4088**.

In situations where the Director suspects that a supplier is engaging in an **unfair practice** they can order their staff to investigate the matter. If it is determined that the supplier did commit an **unfair practice** but is no longer doing so, the Director can enter into an agreement (“undertaking”) with the supplier requiring the supplier to change their business practices and compensate any consumer who has suffered a loss.¹⁸⁸ The Director also has the power to issue orders directing suppliers to stop engaging in **unfair practices**. In addition, in any case

¹⁸⁶ *Fair Trading Act*, s. 17.

¹⁸⁷ *Fair Trading Act*, s. 15.

¹⁸⁸ *Fair Trading Act*, s. 152.

where a supplier has committed an **unfair practice** or failed to live up to the conditions in an undertaking the Director can apply to court for an order requiring the supplier to stop engaging in the **unfair practice** or practices and to compensate anyone who suffered damage or loss as a result of the supplier's actions. In order to register a complaint or raise a question, call the Consumer Services Division at **(780) 427-4088** in Edmonton. If you live outside of Edmonton, the toll free number is **1-877-427-4088**.

Suppliers who engage in **unfair practices** or fail to comply with an undertaking or a Director's order can also be convicted of an offence and be imprisoned or given a very large fine or both.¹⁸⁹

What kinds of legal rights and remedies do consumers have against door-to-door sales people and contractors?

Individuals or companies who come to your home to sell you goods or services or who negotiate or conclude contracts away from their normal place of business are engaged in what is known as "direct sales." The *Fair Trading Act* regulates direct selling in a number of ways. It requires most individuals and companies who sell goods or services "door-to-door" to be licensed.¹⁹⁰ All contractors who come to your door to solicit, negotiate or conclude a maintenance or construction contract such as a contract for home repair or renovation involving a pre-payment for all or part of the contract price must be licensed *and bonded*.

The *Fair Trading Act* gives consumers the right to cancel direct sales contracts for any reason within 10 days of the date that the consumer

¹⁸⁹ *Fair Trading Act*, s. 164.

¹⁹⁰ Some door-to-door sales businesses which may target seniors – for example, individuals and companies selling insurance, cemetery plots and pre-arranged funerals – do not need to be licenced.

received a copy of the direct sales contract from the supplier.¹⁹¹ This means that you can cancel a contract for a home repair or renovation or for the delivery of gas which was negotiated or concluded in your home or a restaurant or in a place other than the supplier's normal place of business without explaining why you are doing so at any time within the 10 day grace period.

Consumers have extended cancellation rights in certain situations. A direct sales contract can be cancelled up to one year from the day the contract was signed if the supplier was required to be licensed under the Act but was not.¹⁹² You can check with the Consumer Services Division of Alberta Government Services to see if the business with which you are dealing must be licensed and whether it is, in fact, licensed. Call **(780) 427-4088** in Edmonton. If you live outside of Edmonton, the toll free number is **1-877-427-4088**.

Consumers also have a year to cancel a direct sales contract in situations where the contract does not include all required information.¹⁹³ Under the *Fair Trading Act*, suppliers must ensure that direct sales contracts include a detailed description of the goods or services to be provided, a clear statement of the consumer's cancellation rights, the terms of payment as well as other key provisions and information.

Consumers also have a year to cancel a direct sales contract in cases where the supplier has failed to deliver goods or begin providing services within 30 days of the delivery date specified in the contract or an amended date agreed to in writing by the consumer and supplier.¹⁹⁴

¹⁹¹ *Fair Trading Act*, s. 27.

¹⁹² *Fair Trading Act*, s. 28(2)(a).

¹⁹³ *Fair Trading Act*, s. 28(2)(b).

¹⁹⁴ *Fair Trading Act*, s. 28(3).

However, the consumer loses this right if he/she accepts delivery of the goods or authorizes services to begin after the 30 day period has expired.

In order to cancel a direct sales contract you must give the supplier notice of the cancellation. You can provide notice by personal service, registered mail, courier or fax or other means. You must be able to prove that you gave notice of cancellation to the supplier and the date you provided it in order to protect your rights.¹⁹⁵ You should therefore keep a copy of the notice you send or find some other method to prove that you gave it—for example, have a witness present if you provide notice to the supplier orally. Notice is considered to be given on the date that a letter is postmarked or delivered and should be sent to the supplier's address set out in the direct sales contract.

If you did not receive a copy of the contract or the supplier's address is not listed on the contract the cancellation notice can be sent to any known address of the supplier or the supplier's salesperson.¹⁹⁶ If you do not know how to reach the supplier you should contact the Consumer Services Division of Alberta Government Services. The Consumer Services Division may have the supplier's address on record and be able to provide it to you. If you cannot locate the supplier's address you can provide notice of your intention to cancel the contract by sending or delivering notice to any office of the Consumer Services Division. Officials with the Consumer Services Division will track down the supplier and let him/her know that the contract has been cancelled.

¹⁹⁵ *Fair Trading Act*, s. 29.

¹⁹⁶ *Fair Trading Act*, s. 29(5).

Suppliers have 15 days to refund your money and any goods provided as a trade-in or the cash value of the trade-in.¹⁹⁷ Until a supplier does so, the consumer has the right to retain possession of the goods provided under the direct sales contract and, in fact, has a lien on the goods.¹⁹⁸ You should therefore only release the goods to the supplier once he/she has fully refunded your money.

If the supplier does not return your money you may be able to recover the amount you are owed from the bond or security the supplier was required to provide under the terms of the *Fair Trading Act* and regulations. The Act and regulations require some businesses to provide a security. As noted above, contractors involved in the prepaid contracting business must provide security. You should contact the Consumer Services Division of Alberta Government Services to find out if the business you are dealing with has provided a security and how to make a claim against the security for the loss you have suffered. Call the Consumer Services Division at **(780) 427-4088** in Edmonton. If you live outside of Edmonton, the toll free number is **1-877-427-4088**.

You cannot make a claim against the security if you have started a court action against the supplier to recover your money. However, you can apply for a payment from the proceeds of the supplier's security if you have successfully sued the supplier and obtained a judgement against them.

Another thing you can do is to refer the matter to the Director of Fair Trading. The Director may, after investigating the matter, apply to court for an order requiring the supplier to refund money owed under a cancelled direct sales contract. Suppliers can also be prosecuted

¹⁹⁷ *Fair Trading Act*, s. 31(2).

¹⁹⁸ *Fair Trading Act*, s. 32.

under the *Fair Trading Act* for failing to refund money following the cancellation of a direct sales contract.

What other legal rights and remedies are available to consumers under the Fair Trading Act?

The *Fair Trading Act* gives consumer other legal rights and protection:

- **The Act prohibits businesses from using "negative option practices" to sell goods or services to consumers.** A negative option sales practice works by default. The consumer is deemed to have accepted goods or services provided by a supplier which the consumer did not order unless they explicitly inform the supplier that they do not want the goods or services.¹⁹⁹
- **The Act prohibits loan brokers from charging a fee in advance of delivering the loan.** Loan brokers must now either take their fee out of the balance of the loan or bill the consumer after the consumer receives the loan.²⁰⁰
- **The Act gives consumers certain rights in relation to time share contracts.** Consumers have the right to cancel a time share contract involving the right to use any type of real or personal property for accommodation, for any reason, up to 10 days after receiving a copy of the contract.²⁰¹ The supplier is required to refund the consumer's money within 15 days of the cancellation of the contract.²⁰² Consumers have extended cancellation rights of up to one year in cases where the time share contract does not set out the consumer's cancellation rights or right to receive

¹⁹⁹ *Fair Trading Act*, s. 23.

²⁰⁰ *Fair Trading Act*, s. 54.

²⁰¹ *Fair Trading Act*, s. 37.

²⁰² *Fair Trading Act*, s. 39.

a refund from the supplier within 15 days of the cancellation of the contract.

Can the legal rights and protections outlined in the Fair Trading Act be waived or taken away from consumers?

No. One of the basic principles of the Act is that the rights, benefits and protections provided by the Act and regulations cannot be given away by consumers or taken away from them.²⁰³

Glossary

Agent: in the case of a personal directive, the person(s) named to make health care and other personal decisions in the event the maker is not mentally competent to do so.

Alternate guardian: a guardian named to fill in if the appointed or named guardian is unable or unwilling to continue to act as guardian.

Alternate trustee: a trustee named to fill in if the appointed or named trustee is unable or unwilling to continue to act as trustee.

Alzheimer disease: a progressive, degenerative disease that attacks the brain and results in impaired memory, cognition, judgment and behaviour.

Appeal: where a person challenges the decisions of one body (e.g., a court) by appealing to a superior body.

Battery: unwanted touching or interference with another person's body.

Better Business Bureau: an organization that promotes truth in advertising and selling, and conciliates business and consumer problems. It also answers questions about the reputation of businesses.

Bail hearing (also judicial interim release hearing): a procedure where the Crown prosecutor attempts to show why the person who has been charged with an offence should stay in detention. If the offence is serious or the person charged with the offence is already out on a

release, the lawyer for the person charged may have to show why his/her client should not be kept in detention or released until the next court date when his/her case is heard.

Bonded: a process whereby an individual is insured as being able to handle money.

Capacity: one's ability to do something. In the case of mental capacity, one's ability to understand decisions and to appreciate the consequences of making them.

Certificate of incapacity: under the *Mental Health Act*, a document that indicates a physician has determined that a person is unable to understand treatment decisions and to appreciate the consequences of making treatment decisions.

Civil claims court (small claims court): a civil court intended to hear claims for damages of \$25,000 or less.

Consent: to agree.

Dementia: a psychological or behavioral abnormality of the brain resulting in impairment in short and long term memory. There may be also be impairment in abstract thinking and judgment or personality change.

Desk procedure: where a judge reads over an application but does not require oral evidence from the applicant or a hearing on the matter before making a decision.

Discharge, absolute: if a judge finds a person guilty of the offence that he/she was charged with, but is convinced that the person should have

another chance, the judge will order that he/she be given an absolute discharge.

Discharge, conditional: if a judge finds a person guilty of the offence that he/she was charged with, but is convinced that the person should have another chance, the judge can order that he/she be given a conditional discharge. This is a sentence ending the matter, but the offender is subject to certain conditions. If the offender breaks the condition(s), he/she can be brought back to court and given a stiffer penalty for the original offence.

Donor: the person who grants a power of attorney.

Duty counsel: lawyers available free of charge to help people at certain court procedures. For example, duty counsel may be available to meet with people shortly before hearings to discuss their cases.

Elder abuse: any act or failure to act which causes physical, emotional or financial harm to an elderly person. It includes physical, sexual and psychological abuse, neglect and exploitation of an elderly person's financial resources.

Emergency protection order: a special court order granted by a provincial court judge or a justice of the peace in emergency situations. Police usually apply for these orders.

Enduring power of attorney: a power of attorney that comes into force with the person becomes incompetent or continues to be in force despite the person becoming incompetent.

Enforcement: a legal process used to collect damages awarded by a court or to otherwise enforce a court's judgment.

Ex parte: where the other side to a court proceeding is not notified of the hearing and is not present in the court. Ex parte applications are usually only heard in cases of emergency.

Formal patient: a person who has been committed to a mental health facility under the *Mental Health Act*.

Guardianship: a legal relationship established by a court order which gives one person (the guardian) the authority to make decisions and act for another. These decisions will be about the personal life and health an adult who lacks capacity to make these decisions for himself or herself.

Incarceration: placing a person in jail or prison.

Incompetent: incapable of understanding and appreciating the nature and consequences of the decision one is making. A person can be considered legally competent to make some kinds of decisions but incompetent to make other kinds of decisions.

Informal trustees: people appointed on an informal basis to help others deal with income or benefits they receive from a number of government programs.

Justice of the Peace: an official who performs many functions. These include hearing charges which are laid, reviewing the status of persons who are being held in custody, issuing search or arrest warrants to police officers, and dealing with bail in most, but not all, cases. A justice of the peace has fewer powers than a provincial court judge.

Legal Aid: a program intended to assist low income persons with legal representation in specified types of legal cases.

Mental Health Patient Advocate: a person assigned to provide information to mental health patients, their families, friends and advocates regarding the legal rights of patients under the *Mental Health Act*.

Negligence: when one person, having a duty towards another, fails to meet the standard of care appropriate to the relationship and thereby causes damages to that person.

No-contact order: an order in a criminal matter to stay away and stop communicating with another person.

Notice of objection: a legal document which indicates that a person objects to some aspect of a guardianship or trusteeship application.

Peace bond: a criminal court order which requires a person to keep the peace and be of good behaviour.

Personal directive: A legal document which provides adults with the means to plan for the time when they are incapable of making personal decisions for themselves. This does not apply to property, which must be dealt with by a power of attorney.

Power of attorney: a legal document which enables one person to give another person the authority to deal with his/her property and financial affairs.

Psychosurgery: a brain operation intended to treat a psychiatric problem.

Public Guardian: a provincial government official appointed to be the guardian of represented adults.

Public Trustee: a provincial government official appointed to oversee the estates of represented adults and children.

Punitive damages: if a court orders punitive damages, this means it seeks to punish the defendant for his/her behaviour in the case.

Request for Hearing: a request that can be made by interested parties that the Court hold a hearing regarding a guardianship or trusteeship application.

Restitution: payment for loss of property, property damages and/or other financial losses resulting from one's action.

Restraining order: an order of the civil court which prohibits a person who has abused or threatened to abuse another person from having further contact with that person.

Revoke: to take away. If one revokes a will, one renders it no longer in effect.

Springing power of attorney: a power of attorney that takes effect only when the donor becomes incompetent.

Statement of accounts: Trustees must file with the Court an inventory and account of the assets and liabilities of the represented adult's property at the time they are appointed or within six months after being appointed or becoming a trustee.

Surrogate Court: A provincial court that has the authority to deal with matters under the *Adult Guardianship and Trustee Act* and wills and estates matters.

Suspended sentence: When a person is found guilty of a crime, a judge can impose a sentence and then suspend it. This means that the

person will not have to serve the sentence unless he/she behaves a certain way (for example, unless he/she commits another offence).

Telemarketing fraud: use of the telephone to make false or misleading representations in order to sell a product or promote a business interest.

Trusteeship: court appointment of a trustee to deal with a represented adult's financial affairs.

Unfair trade practice: unfair practices related to the supply of goods or services to consumers.

AGENCIES

PROVINCE WIDE²⁰⁴

ALBERTA BLUE CROSS

Administers provincial health benefit plan for seniors.
Phone: 1-800-661-6995 (customer service)
Phone: 1-800-394-1965 (individual plans)
Phone: 1-800-661-6995 (travel plans)
Website: www.ab.bluecross.ca

Calgary:

Main Floor 715 5th Avenue SW
Calgary T2P 2X6
Phone: (403) 234-9666
Fax: (403) 266-5644
Edmonton:
10009 108th Street NW
Edmonton T5J 3C5

Phone: (780) 498 - 8100 or (780) 498-8008
(Individual Health Dental Plan)
Fax: (780) 425-4627

Lethbridge

470 Chancery Court 220-4th Street S
Lethbridge T1J 4J7
Phone: (403) 328- 6081 (Group Sales)
or (403) 328-1785 (Customer Service)
Fax: (403) 327- 9823

²⁰⁴ Many thanks to Tyler Lord for preparing this section.

Fort McMurray

Plaza II 619 8600 Franklin Avenue
Fort McMurray T9H 4G8
Phone: (780) 790-3390
Fax: (780) 791-6999

Grande Prairie

Suite 108 10126 - 120 Avenue
Grande Prairie T8V 8H9
Phone: (780) 532-3505 (Customer Service)
or (787) 053-23507 (Group Sales)
Fax: (780) 539-0455

Medicine Hat

203 Chinook Place
623 4th Street SE
Medicine Hat T1A 0L1
Phone: (403) 529-5553
Fax: (403) 527-3798

Red Deer

152 Riverside Office Plaza
4919 59th Street
Red Deer T4N 6C9
Phone: (403) 343-7009
Fax: (403) 340-1098

ALBERTA CANCER BOARD

Operates cancer facilities and programs throughout Alberta. Services range from screening to prevention to treatment, diagnosis and education. The ACB operates both the Tom Baker Cancer Centre

in Calgary and the Cross Centre in Edmonton.

Edmonton:

Provincial Office of the Alberta Cancer Board

Suite 1500 Sun Life Place
10123 - 99 Street
Edmonton T5J 3H1
Phone: (780) 643-4500
Fax: (780) 643-4446

Cross Cancer Institute

11560 University Avenue
Edmonton T6G 1Z2
Phone: (780) 432-8771

Calgary:

Tom Baker Cancer Centre

1331 - 29 Street NW
Calgary T2N 4N2
Phone: (403) 521-3723
After Hours Phone: (403) 944-1110
(Foothills Emergency)
Email: info@cancerboard.ab.ca
Website: www.cancerboard.ab.ca

Standard Life Centre-Sales Offices of Group Life & Health

The Standard Life Building
639 - 5th Avenue SW
Suite 1000
Calgary T2P 0M9
Phone: (403) 296-9400 ext. 1100
or 1-800-805-1631
Fax: (403) 531-1147
Email: westerncanada.groupinsurance@standardlife.ca

The Standard Life Centre

10405 Jasper Avenue, Suite 550
Edmonton T5J 3N4
Phone: (780) 944-0660
or 1-888-944-0600
Fax: (780) 425-8810
Email:
westerncanada.groupinsurance@standardlife.ca

ALBERTA COMMUNITY DEVELOPMENT / ALBERTA SENIORS BENEFIT

Assistance for lower income seniors provides full subsidy of Alberta Health fees etc.
Box 3100
Edmonton T5J 4W3
Phone: 1-800-642-3853
Fax: (780) 422-5954

ALBERTA COMMUNITY DEVELOPMENT / ENHANCED HOME ADAPTATION PROGRAM

Provides grants to assist severely disabled persons requiring the use of a wheelchair to make permanent modifications to their homes.
16th Floor Commerce Place
10155 102nd Street
Edmonton T5J 4L4
Phone: (780) 427-5760
Fax: (780) 422-5124
Website:
www.gov.ab.ca/ma/hca/housing/factsheets/hap.htm

ALBERTA COMMUNITY DEVELOPMENT / SENIORS ADVISORY COUNCIL FOR ALBERTA

Holds meetings throughout the province and provides

recommendations to the government on policies and legislation affecting seniors.
Seniors Advisory Council for Alberta
c/o Alberta Community Development
330 Standard Life Centre
10405 Jasper Avenue
Edmonton T5J 3N4
Phone: (780) 422-2321
Fax: (780) 427-1689
Email: saca@gov.ab.ca

ALBERTA COMMUNITY DEVELOPMENT / SENIORS SERVICES DIVISION

Provides information on provincial seniors services, coordinates housing for seniors, monitors seniors issues and develops programs and policies.
6th Floor Standard Life Centre
10405 Jasper Avenue
Edmonton T5J 3N4
Phone: (780) 422-2724
Fax: (780) 422-5954

ALBERTA COMMUNITY DEVELOPMENT / SPECIAL NEEDS ASSISTANCE FOR SENIORS

Income supplement program that provides a lump sum cash payment to help lower income seniors with financial difficulties.
Box 3100
Edmonton T5J 4W3
Phone: (780) 427-7876 or 1-800-642-3853 (Toll Free)
Fax: (780) 422-5954
Website:
http://www.seniors.alberta.ca/financial_assistance/special_needs/

ALBERTA COUNCIL ON AGING

Advocate for seniors issues in society, provides counseling services for seniors.
Provincial office 210 14964
121A Avenue
Edmonton T5V 1A3
Phone: (780) 423-7781
Fax: (780) 425-9246
Website: www.acaging.ca

ALBERTA GOVERNMENT SERVICES

Consumer Services Division

16th floor, 10155 102 Street
Edmonton T5J 3Z8
Phone: (780) 427-4088
(Edmonton and area)
or 1-877-427-4088
(Toll free across Alberta)
E-mail: service.alberta@gov.ab.ca
Website:
www.servicealberta.gov.ab.ca

ALBERTA HEALTH AND WELLNESS

Administers Alberta Health Plan, health and hospital services as well as special services for seniors.

Website: www.health.alberta.ca
120 727 7th Avenue SW
Calgary
(Correspondence to Edmonton office)
Phone: (403) 297-6411
(automated voice system - all phone calls routed to Edmonton office)
Fax: (780) 422-0102

Telus Plaza North

10025 Jasper Avenue
PO Box 1360
Edmonton T5J 2N3
Phone: (780) 427-1432
(automated voice system)
Fax: (780) 422-0102

ALBERTA MENTAL HEALTH ASSOCIATION

Provides programs and support to promote the mental health of Albertans.

Head Office:
10835 124th Street
Edmonton T5M 0H4
Phone: (780) 414-6300
Fax: (780) 482-7498

ALBERTA SENIORS AND COMMUNITY SUPPORTS

Phone: 1-800-642-3853 (Toll free Alberta Seniors Information Line)
Website:
<http://www.seniors.alberta.ca/>

ALBERTA SENIORS AND COMMUNITY SUPPORTS – HOUSING SERVICES DIVISION

4th Floor Standard Life Centre
10405 Jasper Avenue
Edmonton T5J 4R7
Phone: (780) 427-3919
Fax: (780) 427-0418

FEDERAL GOVERNMENT INCOME SECURITY PROGRAMS

Provides information on federally managed income security programs (Old Age Security, Federal Employee Pensions, Canada Pension Plan, Guaranteed Income Supplement)
Phone: 1-800-277-9914

(Bilingual service)

OFFICE OF THE OMBUDSMAN

Investigates complaints of anyone who believes they have been unfairly treated by the provincial government.

Calgary:

850 - 633 6th Avenue SW
Calgary T2P 2Y5
Phone: (403) 297-6185

Edmonton:

1630 Phipps-McKinnon Building
10020 101A Avenue
Edmonton T5J 3G2
Phone: (780) 427-2756

OFFICE OF THE PUBLIC GUARDIAN

Under the authority of the Dependent Adults Acts, the Public Guardian acts as a guardian for a dependent adult where no one else is willing, able or suitable to act.

Southern Alberta Regional Office
9th floor, 855 - 8th Avenue SW
Calgary T2P 3P1
Phone: (403) 297-3364

Northern Alberta Regional Office
4th Floor 108 Street Building
9942 108th Street
Edmonton T5K 2J5
Phone: (780) 427-0017
Fax: (780) 427-9138

OFFICE OF THE PUBLIC TRUSTEE

Administers the estates of deceased, mentally incapacitated or missing persons.

Website:
http://justice.alberta.ca/programs_services/public_trustee/

Phone: (403) 292-4048
Fax: (403) 292-4839

Calgary:
Telus Tower
2100 411 1st Street SE
Calgary T2G 4Y5
Phone: (403) 297-2823

Edmonton
4th Floor JE Brownlee Building
10365 97th Street
Edmonton T5J 3Z8
Phone: (780) 427-2744

SCHIZOPHRENIA SOCIETY OF ALBERTA

Chapters throughout Alberta provide information and support to families and those with schizophrenia.
Phone: 1-800-661-4644

SENIORS INFORMATION LINE

Provides information and connections to services and facilities for seniors throughout Alberta, provides basic health information and referral service.
Phone: 1-800-642-3853

SENIORS ADVISORY COUNCIL FOR ALBERTA

Phone: Dial 310 0000 then (780) 422-2321 (Toll Free)

VETERANS AFFAIRS CANADA

Counseling and benefits provided for veterans and their families.
104 510 12th Avenue SW
Calgary T2R 0X5

CALGARY

ALBERTA BLUE CROSS

Administers provincial health benefit plan for seniors.
Main Floor 715 7th Avenue SW
Calgary T2P 2X6
Phone: (403) 234-9666
Fax: (403) 266-5644

ALBERTA COMMUNITY DEVELOPMENT: FIELD SERVICES BRANCH

Provides assistance with Alberta Seniors benefits Program and Special Needs Assistance program for seniors (those 65 and older) who are eligible for federal Old Age Security.

101 525 11 Avenue SW
Calgary T2R 0C9
Phone: (403) 297-8418 or
Fax: (403) 297-5751

ALBERTA HEALTH AND WELLNESS

Administers Alberta Health Plan, health and hospital services as well as special services for seniors.120 727 7th Avenue SW
Calgary
(correspondence to Edmonton office)
Phone: (403) 297-6411
(automated voice system - all phone calls routed to Edmonton)
Fax: (780) 422-0102

ALBERTA MUNICIPAL AFFAIRS: CONSUMER SERVICES AND HOUSING

Assists low to moderate income seniors (those 55 and older) to repair, improve or renovate their homes, also investigates consumer complaints in legislated areas including residential and mobile home tenancies, direct sales, unfair trade practices, charitable fund-raising and pre-arranged funerals.
301 - Centre 70 Macleod Trail South
Calgary T2H 2K6
Phone: (403) 297-5700
Fax: (403) 297-6138

ALZHEIMER SOCIETY OF CALGARY

Offers support through groups, meetings and training to families and individuals suffering from the effects of **Alzheimer disease**.
1920 11th Street SE
Calgary T2G 3G2
Phone: (403) 290-0110

ASSURED INCOME FOR THE SEVERELY HANDICAPPED (AISH)

#500 TGS Place
1520 – 4 Street SW
Calgary T2R 1H5
Phone: (403) 297-8511

BETHANY CARE CENTRE

Non-profit volunteer society which provides care for seniors and persons with disabilities provides 36 residential beds, 470 long term beds and 30 beds for residents with dementia.

1001 17 Street NW

Calgary T2N 2E5
Phone: (403) 210-4600
or 1-888-410-4679 (toll free)
Fax: (403) 284-1992

**BOWMONT SENIORS
ASSISTANCE ASSOCIATION**

Provides information, outreach and volunteer opportunities for persons 60 years and older.

The Bowmont Seniors Assistance Association
5000 Bowness Road NW
Calgary T3B 0B9
Phone: (403) 286-1811
Fax: (403) 202-5641
Website: www.bowmontseniors.org

**CALGARY ASSOCIATION OF SELF
HELP**

Offers support, education, life skills programs.

1019 - 7th Avenue SW
Calgary T2P 1A8
Phone: (403) 266-8711
Fax: (403) 266-2478
Email: info@calgaryselfhelp.com

**CALGARY CHINESE ELDERLY
ASSOCIATION**

Provides outreach, educational, wellness, recreational and social activities and services for seniors and new immigrants.

111 Riverfront Avenue SW
Calgary T2P 4Y8
Phone: (403) 269-6122
Fax: (403) 247-1951
Website: www.cceca.ca

**CALGARY FAMILY SERVICES -
OLDER ADULT SERVICES**

Main Downtown Office
200, 1000 – 8th Avenue SW
Calgary T2P 3M7
Phone: (403) 269-9888
Fax: (403) 205-5281

**CALGARY FAMILY SERVICES
OUTREACH PROGRAM FOR
OLDER ADULTS**

Provides services to improve the quality of life of seniors living in their own homes.

North or West Calgary
5000 Bowness Road NW
Calgary T3B 0B9
Phone: (403) 286-1811
Fax: (403) 202-5641

Central or South Central Calgary
922-9 Avenue SE
Calgary T2G 0S4
Phone: (403) 705-0593
Fax: (403) 705-0597

CALGARY HOUSING AUTHORITY

Provides housing units for low or moderate income, physically disabled individuals and families.

Braithewaite Boyle Centre
1701 Centre Street NW
Calgary T2E 7Y2
Phone: (403) 221-9100

CALGARY LEGAL GUIDANCE

**COURT PREPARATION PROGRAM
AND RESTRAINING ORDER
SERVICE**

100 Rocky Mountain Plaza

615 Macleod Trail S.E.
Calgary T2G 4T8
Phone: (403) 234-8532

CALGARY MEALS ON WHEELS

Hot dinners and cold suppers delivered five days per week for elderly and short term convalescents and others over 60. There is an annual membership and a sliding scale for meals.
3610 Macleod Trail SE
Calgary T2G 2P9
Phone: (403) 243-2834
Fax: (403) 243-8438
Website: www.mealsonwheels.com

CALGARY REGIONAL HEALTH AUTHORITY

Phone: (403) 531-8080
(24-Hour Information Line)

CALGARY WEST SENIORS HOUSING SOCIETY

Provides affordable housing to low income seniors.
11 Varsity Estates View NW
Calgary T3B 5G5
Email: cwshs@calgarywestseniors.ca

CANADIAN CANCER SOCIETY

Provides support and information to those affected by cancer, and their families.
200, 325 Manning Road NE
Calgary T2E 2P5
Phone: (403) 205-3966
or 1-800-661-2262
(Toll Free)
Fax: (403) 205-3979
Website: www.cancer.ca

CANADIAN MENTAL HEALTH ASSOCIATION

Community development programs provide life skills courses and adult education for clients with mental illness.
103 - 723 14th Street NW
Calgary T2N 2A4
Phone: (403) 297-1700

CITY OF CALGARY / CALGARY HOME PROGRAM

Provides low income housing for independent people or those living with support.
830 615 Macleod Trail SE
Box 2100
Postal Station M
Calgary T2P 2M5
Phone: (403) 268-1450

COALITION OF SENIORS ADVOCATES

Phone: (403) 730-2477

COLONEL BELCHER

A long term care facility for veterans and community members operated by Carewest.
1939 Veterans Way NW
Calgary, T2R 0X7
Phone: (403) 944-7800

INCOME SECURITY PROGRAMS: HUMAN RESOURCES AND DEVELOPMENT CANADA

Provides counselling and assistance to those 65 and older who are eligible for or are receiving Old Age Security, Guaranteed Income Supplement, Spouses Allowance or Widowed Spouses Allowance.

270 220 4th Avenue SW
Calgary T2G 4X3
Phone: 1-800-277-9914
Fax: (403) 292-8869

KERBY CENTRE

Provides adult day programs, information and advocacy, housing registry, health centre, social services outreach, resource centre, and shelter for abused seniors.

1133 7 Avenue SW
Calgary T2P 1B2
Phone: (403) 265-0661
or (403) 705-3246
(for a free legal consultation)
Fax: (403) 705-3211
Website: www.kerbycentre.com

METROPOLITAN CALGARY FOUNDATION: HOUSING FOR SENIORS

Provides 392 apartment units for senior citizens physically and mentally able to care for themselves, private rooms and rooms for couples with meals, housekeeping, recreation and planned activities provided.

804 Centre 70
7015 Macleod Trail SW
Calgary T2H 2K6

Phone: (403) 276-5541
Fax: (403) 276-9152

NATIVE COUNSELING SERVICES OF ALBERTA REGIONAL OFFICE

Family life improvement program, counseling and institutional programs for aboriginals.
Rocky Mountain Plaza
Suite 640 615 Macleod Trail SE
Calgary T2G 4T8
Phone: (403) 237-7850
Website: www.ncsa.ca

OFFICE OF THE OMBUDSMAN

Investigates complaints of anyone who believes they have been unfairly treated by the provincial government.
Suite 2560 801-6 Avenue SW
Calgary T2P 3W2
Phone: (403) 297-6185
Fax: (403) 297-5121
Website: www.ombudsman.ab.ca

OFFICE OF THE PUBLIC GUARDIAN

Under the authority of the Dependent Adults Acts, the Public Guardian acts as a guardian for a dependent adult where no one else is willing, able or suitable to act.

Southern Alberta Regional Office
9th floor, 855 - 8th Avenue SW
Calgary T2P 3P1
Phone: (403) 297-3364

PROVINCIAL MENTAL HEALTH ADVISORY BOARD

Regional Director's Office
206 Hillhurst Professional Building
301 - 14th Street NW
Calgary
Phone: (403) 297-4520

**THE SALVATION ARMY
COMMUNITY SERVICE CENTRE**

Provides beds, meals, bus fares and furniture in emergencies.

1402 8th Avenue NW
Calgary T2N 1B9

**SCHIZOPHRENIA SOCIETY OF
ALBERTA**

PROVINCIAL OFFICE

Chapters throughout Alberta provide information and support to families and those with schizophrenia.

309-8989 Macleod Trail SE
Calgary T2H 0M2
Phone: (403) 264-5161 ext 34
or 1-800-661-4644 (toll free)
Fax: (866) 273-1780

VETERANS AFFAIRS CANADA

Counseling and benefits provided for veterans and their families.

04 510 12th Avenue SW
Calgary T2R 0X5
Phone: (403) 292-4048
Fax: (403) 292-4839

**WE CARE HOME HEALTH
SERVICES / CALGARY NORTH**

Provides care from home making assistance, companion services, shopping and nursing homes.

3359 27 Street NE
Calgary T1Y 5E4
Phone: (403) 297-9744
Fax: (403) 297-9740

Email:
rainsworth@wecarecanada.com

**WE CARE HOME HEALTH
SERVICES / CALGARY SOUTH**

Provides care from home making assistance, companion services, shopping and nursing homes.

100-10325 Bonaventure Drive SE
Calgary T2J 7E4
Phone: (403) 225-1222
Fax: (403) 271-6688
Email:
rainsworth@wecarecanada.com

EDMONTON

ALBERTA BLUE CROSS

Administers provincial health benefit plan for seniors.
10009 108th Street
Edmonton T5J 3C5
Phone: (780) 498-8100
Fax: (780) 498-8029

ALBERTA COUNCIL ON AGING

Advocate for seniors issues in society, provides counselling services for seniors.
210 14964 121A Avenue
Edmonton T5V 1A3
Phone: (780) 423-7781
or 1-888-423-9666
Fax: (780) 425-9246

ALBERTA HEALTH AND WELLNESS

Administers health and hospital services as well as special services for seniors.
Telus Plaza North
10025 Jasper Avenue
Edmonton
PO Box 1360 T5J 2N3
Phone: (780) 427-1432
Fax: (780) 422-0102
Website: www.health.alberta.ca

ALBERTA MENTAL HEALTH SERVICES

Community development programs provide life skills courses and adult education for clients with mental illness.
Regional Director's Office
5th floor 9942 - 108th Street
Edmonton T5K 2J5
Phone: (780) 427-4444

ALBERTA MUNICIPAL AFFAIRS AND HOUSING

Assists low to moderate income seniors (those 55 and older) to repair, improve or renovate their homes, also investigates consumer complaints in legislated areas including residential and mobile home tenancies, direct sales, unfair trade practices, charitable fund-raising and pre-arranged funerals.
18th Floor Commerce Place 10155
102nd Street
Edmonton T5J 4L4
Phone: (780) 427-8862
or 1-310-0000 then 427-8862 (toll free)
Fax: (780) 422-1419

ALBERTA SENIOR CITIZENS HOUSING ASSOCIATION

9711 47 Avenue
Edmonton T6E 5M7
Phone: (780) 439-6473
Fax: (780) 433-3717

ALZHEIMER SOCIETY OF EDMONTON

Offers support through groups and meetings to families and individuals

suffering the effects of **Alzheimer disease**.

10531 Kingsway Avenue
Edmonton T5H4K1
Phone: (780) 488-2266
Fax: (780) 488-3055

ASSURED INCOME FOR THE SEVERELY HANDICAPPED (AISH)

#500 Westcor Building
12323 Stony Plain Road
Edmonton T5N 4B4
Phone: (780) 415-6300
Canadian Cancer Society
1200 College Plaza
8215 112th Street
Edmonton T6G 2C8
Phone: (780) 455-7181
Fax: (780) 455-0277

CANADIAN MENTAL HEALTH ASSOCIATION

800 Harley Court
10045 111 Street NW
Edmonton T5K 2M5
Phone: (780) 414-6300
Fax: (780) 482-7498

EDMONTON MEALS ON WHEELS

Hot dinners and cold suppers delivered five days per week for elderly and short term convalescents and others over 60. There is an annual membership and a sliding scale for meals. Only serves Edmonton, does not include St. Albert or Sherwood Park.
11111 103rd Avenue
Edmonton T5K 2P1
Phone: (780) 429-2020
Fax: (780) 424-5561
Website:
www.mealsonwheeledmonton.org

NEIGHBOUR LINK EDMONTON REGION

Provides volunteers to help seniors with shopping appointments, meal planning and visits.
Box 51085 Highland B
Edmonton T5W 5G5
Phone: (780) 448-0924
Fax: (780) 479-8838

EDMONTON SENIORS HEALTH LINE

As part of the Capital Health Authority, the information line provides health information and referral service to seniors in Edmonton and surrounding region. The service also recruits agencies to become patrons with the health line. Also provides patient follow-up services.
Phone: (780) 408-5465

GOOD SAMARITAN SOCIETY

Provides supervised personal care for seniors in addition to administration of self-contained apartments, outreach services and medical alert services.
200 9405 50th Street
Edmonton T6B 2T4
Phone: (780) 431-3600
Fax: (780) 431-3795
Website: www.gss.org

**GREATER EDMONTON
FOUNDATION – HOUSING FOR
SENIORS**

Prepares, develops, provides and manages affordable housing which encourages a high quality of life for seniors who are functionally independent.

14220 109 Avenue

Edmonton T5N 4B3

Phone: (780) 482-6561

Fax: (780) 488-3561

Website: [www.housing for
seniors.org](http://www.housingfor
seniors.org)

**INDEPENDENT COUNSELING
ENTERPRISES**

A multifunctional human care agency, offers a wide range of support.

Edmonton Office:

15031 - 118 Avenue

Edmonton T5V 1H9

Phone: (780) 454-9500

Email: ice@icenterprises.com

**NATIVE COUNSELLING SERVICES
OF ALBERTA**

Helps to shape restorative and social justice models and practices, and has provided programs and services designed and delivered by Aboriginal people for Aboriginal people.

10975 – 124 Street

Edmonton T5M 0H9

Phone: (780) 451-4002 or

Fax: (780) 428-0187

Website: www.ncsa.ca

**OFFICE OF THE PUBLIC
GUARDIAN**

Provides decision-making mechanisms for individuals who are unable to make personal, non-financial decisions for themselves.

Provincial Office

4th Floor, Standard Life Centre

10405 Jasper Avenue

Edmonton T5J 4R7

Phone: (780) 422-1868

Fax: (780) 422-6051

Northeast Region

#110 Provincial Building

5025-49 Avenue

St. Paul T0A 3A4

Phone: (780) 645-6278

Fax: (780) 645-6260

**PROTECTION AND RESTRAINING
ORDER PROJECT**

Provides payment for lawyer's fee on restraining order.

#205, 10010 107A Avenue

Edmonton T5K 4H8

Phone: (780) 423-8920

**SENIORS ASSOCIATION OF
GREATER EDMONTON (SAGE)**

15 Sir Winston Churchill Square

102A Avenue and 100 Street

Edmonton T5J 2E5

Phone: (780) 423-5510

Website: www.mysage.com

**SOUTHEAST EDMONTON
SENIORS ASSOCIATION**

Social and recreational centre which provides activities, educational programs and health care for those 55 and older.

9350 82nd Street
Edmonton T6C 2X8
Phone: (780) 468-1985
Fax: (780) 440-6272
Website: www.seesa.ca

**STRATHCONA PLACE SENIOR
CITIZENS CENTRE**

Provides leisure activities, social contact as well as information services and referrals for seniors.
10831 University Avenue
Edmonton T6E 4R1
Phone: (780) 433-5807
Fax: (780) 433-5282

**WE CARE HOME HEALTH
SERVICES / EDMONTON NORTH
AND SOUTH**

Provides care from home making assistance, companion services, shopping and nursing homes.
500 Capilano Centre
9945 50th Street
Edmonton T6A 0L4
Phone: (780) 468-4663
or 1-877-468-3994 (toll free)
Website: www.wecare.ca
Email: dfraser@wecarecanada.com
or cagrigger@wecarecanada.com

WEST EDMONTON SENIORS

Provides social and health services to seniors on a drop-in basis.
Edmonton General Hospital Room 3R19
11111 Jasper Avenue
Edmonton T5K 0L4
Phone: (780) 488-8583

RED DEER

ALBERTA BLUE CROSS

Provides management of supplemental and non-governmental health plans.
152 Riverside Office Plaza
4919 59th Street
Red Deer T4N 6C9
Phone: (403) 343-7009
Fax: (403) 340-1098

ALZHEIMER SOCIETY OF RED DEER AND CENTRAL ALBERTA

Counseling and support for people with Alzheimer's and their families. Open Tuesday and Thursday.
101 4805 48 Avenue
Red Deer T4N 3T2
Phone: (403) 346-2540
Fax: (403) 342-0448
Website: www.alzheimer.ab.ca

ASSURED INCOME FOR THE SEVERELY HANDICAPPED (AISH)

#109 Provincial Building
4920-51 Street
Red Deer T4N 6K8
Phone: (403) 340-7077

CANADIAN CANCER SOCIETY

Provides information and support to those affected by cancer, and their families.
4730-A Ross Street
Red Deer T4N 1X2
Phone: (403) 347-3662
Fax: (403) 347-9690

CANADIAN MENTAL HEALTH ASSOCIATION

Central Region
4 - 5015 48th Street
Red Deer T4N 1S9
Phone: (403) 342-2266
Fax: (403) 342-5684

COUNCIL ON AGING

A council that designs programs for adults, aids in advocacy and will completion. Meetings held at Red Deer Legion.
16 Anders Close
Red Deer T4R 1C3
Phone: (403) 343-3787

GOLDEN CIRCLE SENIORS CENTRE

Drop-in and activity centre for seniors. Provides games, meals, travel opportunities and social programs.
4620 47A Avenue
Red Deer T4N 3R4
Phone: (403) 343-6074
Fax: (403) 343-7977

PARKLAND COMMUNITY LIVING AND SUPPORT SOCIETY

Provides family support services.
6010 45th Avenue
Red Deer T4N 3M4
Phone: (403) 347-3333
Fax: (403) 342-2677

PIPER CREEK FOUNDATION

Provides a subsidized housing program for seniors who will benefit from nutritious meals, recreational programs and the security of having 24-hour staffing.

301, 4719 – 48 Avenue
Red Deer T4N 3T1
Phone: (403) 343-1077
Fax: (403) 343-2332
Email: info@piper creek.ca

**RED DEER TWILIGHT HOMES
FOUNDATION**

Owns and operates seniors housing.
4809 - 34th Street
Red Deer T4N 0P2
Phone: (403) 343-0680
Fax: (403) 341-5955

THE SALVATION ARMY

Provides beds, meals, food
vouchers, bus fares, clothing and
furniture in emergencies.
PO Box 328
Red Deer T4N 5E9
Phone: (403) 346-2251

**SENIOR CITIZENS DOWNTOWN
HOUSE**

Drop-in centre for seniors that
provides meals, social services and
entertainment opportunities.
5454 43 Street
Red Deer T4N 1C9
Phone: (403) 346-4043

**WE CARE HOME HEALTH
SERVICES**

Provides care from home making
assistance, companion services,
shopping and nursing homes.
5560 45th Street Unit
Red Deer T4N 1L1
Phone: (403) 342-1500
or 1-877-344-1500 (toll free)
Fax: (403) 309-5094

FORT McMURRAY

ALBERTA BLUE CROSS

Administers provincial health benefit plan for seniors.

Plaza II

619 8600 Franklin Avenue

Fort McMurray T9H 4G8

Phone: (780) 790-3390

Fax: (780) 791-6999

ASSURED INCOME FOR THE SEVERELY HANDICAPPED (AISH)

7th Floor Provincial Building

9915 Franklin Avenue

Fort McMurray T9H 2K4

Phone: (780) 743-7106

CANADIAN MENTAL HEALTH ASSOCIATION – WOOD BUFFALO REGION

10011 Franklin Avenue, Suite #302

Fort McMurray T9H 2K7

Phone: (780) 743-1053

Fax: (780) 743-0959

FORT McMURRAY HOUSING AUTHORITY

Provides and operates low income and seniors housing in Fort McMurray. Operates two self-contained buildings for seniors and one Rotary House offering independent apartments, meals included.

8110 Manning Avenue

Fort McMurray T9H 1V7

Phone: (780) 791-9724

Fax: (780) 791-0083

FORT McMURRAY REGIONAL HOSPITAL

7 Hospital Street

Fort McMurray T9H 1P2

Phone: (780) 791-6161

NORTHERN LIGHTS REGIONAL HEALTH CENTRE

Provides 24 hr emergency laboratory x-ray, mental health, general surgery, and ambulatory home care.

7 Hospital Street

Fort McMurray T9H 1P2

Phone: (780) 791-6161

Fax: (780) 791-6167

GRANDE PRAIRIE

ALBERTA BLUE CROSS

Administers provincial health benefit plan for seniors.
101A 10712 100th Street
Grande Prairie T8V 3X8
Phone: (780) 532-3505
Fax: (780) 539-0455

ALBERTA SENIORS AND COMMUNITY SUPPORTS - SENIORS INFORMATION SERVICES OFFICES

Northwest Region
1701 Provincial Building
10320 - 99 Street
Grande Prairie

Phone: (780) 538-5300
Fax: (780) 538-5308

ASSURED INCOME FOR THE SEVERELY HANDICAPPED (AISH)

#101, Aberdeen Center
9728 Montrose Avenue
Grand Prairie T8V 5B6
Phone: (780) 833-4399

Canadian Cancer Society
-Provides information and support to those affected by cancer.
Grande Prairie Unit
Canadian Cancer Society
#103, 9805-97 Street
Grande Prairie T8V 8B9

CANADIAN MENTAL HEALTH ASSOCIATION – NORTH WEST REGION

9713-100 Avenue
Grande Prairie T8V 0T5
Phone: (780) 539-4681
Fax: (780) 513-4352

GRANDE PRAIRIE MEALS ON WHEELS

Hot dinners and cold suppers delivered five days per week for elderly and short term convalescents and others over 60.
102 9905 101st Avenue
Grande Prairie T8V 0X7
Phone: (780) 539-3901
Fax: (780) 538-1115
Email: meals-gp@telus.net

GRANDE PRAIRIE SPIRIT FOUNDATION

Provides and manages low income and seniors housing.
Administration Office
9505-102 Avenue
Grande Prairie T8V 7G9
Phone: (780) 532-2905
Fax: (780) 539-3155
Email: info@grandespirit.org
or seniors@grandespirit.org

Family Housing Office
#111, 11010-107A Avenue
Margaret Edgson Manor
Grande Prairie T8V 8L3
Phone: (780) 532-3276
Fax: (780) 882-6774
Email: family@grandespirit.org

MISTAHIA HEALTH REGION

Provides basic health services to Grande Prairie and surrounding area.

103 20 99th Street
Grande Prairie T8V 6J4
Phone: (780) 538-5387

QUEEN ELIZABETH II HOSPITAL

10409 98 Street
Grand Prairie T8V 2E8
Phone: (780) 538-7100

THE SALVATION ARMY

10057 98th Street
Grande Prairie T8V 2E7
Phone: (780) 532-3720

WE CARE HOME HEALTH SERVICES

-Provides care from home making assistance, companion services, shopping and nursing homes.

302 9728 Montrose Avenue
Grande Prairie T8V 5B6
Phone: (780) 539-5995
Fax: (780) 539-6797
Email: colcooke@telusplanet.net

LETHBRIDGE

ALBERTA BLUE CROSS

Provides management of supplemental and non-governmental health plans.
470 Chancery Court
Lethbridge T1J 4J7
Phone: (403) 328-6081
Fax: (403) 327-9823

ASSURED INCOME FOR THE SEVERELY HANDICAPPED (AISH)

Provincial Building
200-5 Avenue S
Lethbridge T1J 4L1
Phone: (403) 381-5186

CANADIAN CANCER SOCIETY

Provides support and information to those affected by cancer, and their families.
317 10th Street South
Lethbridge T1J 2M7
Phone: (403) 327-5452
Fax: (403) 327-5883

CANADIAN MENTAL HEALTH ASSOCIATION

Alberta South Region
426 6th Street South
Lethbridge T1J 2C9
Phone: (403) 329-4775

CHINOOK HEALTH REGION

Provides of basic health services, home care, continuing care and rehabilitation throughout Lethbridge and surrounding area.
Lethbridge Centre Tower
800-400 4th Avenue South
Lethbridge T1J 4E1
Phone: (403) 388-6009
Fax: (403) 388-6011
Website:
www.albertahealthservices.ca

GREEN ACRES FOUNDATION

Operates seniors and low income housing in Lethbridge.
122 5 Avenue South
Lethbridge T1J 0S9
Phone: (403) 328-1155
Fax: (403) 328-6370
Email: info@greenacres.ab.ca

LETHBRIDGE HOUSING AUTHORITY

Manages low income and seniors housing in the Lethbridge area.
324B Mayor Magrath Drive South
Lethbridge T1J 3L7
Phone: (403) 329-0556
Fax: (403) 327-3906
Email: info@lethbridgehousing.ca
Website:
www.lethbridgehousing.ca

LETHBRIDGE MEALS ON WHEELS

Hot dinners and cold suppers delivered five days per week for elderly and short term convalescents and others over 60.
Pemican Lodge 102 5th Street South
Lethbridge T1J 0S9
Phone: (403) 327-7990
Fax: (403) 327-7990

Website:

www.mealsonwheelslethbridge.ca

LETHBRIDGE SENIORS CENTRE

Run by and for seniors. The LSC is a multipurpose centre which provides health, social, educational, recreational, support and travel programs to seniors.

500 11th Street South

Lethbridge T1G 4G7

Phone: (403) 320-2222

Fax: (403) 320-2762

Email: Janv33@lethseniors.com

Website: www.lethseniors.com

NORD-BRIDGE SENIOR CITIZENS ASSOCIATION

1904-13 Avenue North

Lethbridge

Phone: (403)381-5469

Fax: (403)382-4533

THE SALVATION ARMY

1811 2nd Avenue South

PO Box 490

Lethbridge T1J 3Z3

Phone: (403) 327-8084

WE CARE HOME HEALTH SERVICES

Provides care from home making assistance, companion services, shopping and nursing homes.

2 Avenue A North

Lethbridge T1H 0E3

Phone: (403) 380-4441

Fax: (403) 380-4434

Email: wecare@lis.ab.ca

MEDICINE HAT

ALBERTA BLUE CROSS

Provides management of supplemental and non-governmental health plans.
203 623 4th Street South East
Medicine Hat T1A 0L1
Phone: (403) 529-5553
Fax: (403) 527-3798

ALBERTA MENTAL HEALTH

Community development programs provide life skills courses and adult education for clients with mental illness.
2 346 3rd Street South East
Medicine Hat T1A 0G7
Phone: (403) 529-3500
Fax: (403) 529-3562
Website: www.amhb.ab.ca

ASSURED INCOME FOR THE SEVERELY HANDICAPPED (AISH)

#201, Provincial Building
346-3 Street SE
Medicine Hat T1A 0G7
Phone: (403) 529-3550

CANADIAN CANCER SOCIETY

Provides support and counselling to those affected by cancer, and their families.
631 Prospect Drive
Medicine Hat T1A 4C2
Phone: (403) 529-8015
Fax: (403) 529-8947
Website: www.cancer.ca

CYPRESS VIEW FOUNDATION

Operates seniors and low income housing in Medicine Hat.
722 Bassett Crescent North West
Medicine Hat T1A 7W8
Phone: (403) 527-8755
Fax: (403) 526-6914
Website: www.cypressview.org

MEDICINE HAT REGIONAL SOCIAL HOUSING SOCIETY

Provides subsidized housing to low income families and seniors.
104 516 3rd Street South East
Medicine Hat T1A 0H3
Phone: (403) 527-4507
Fax: (403) 526-3163
Website: www.mhchs.ca

PALLISER HEALTH REGION COMMUNITY HEALTH SERVICES

In addition to providing basic health services for Medicine hat and region, the Palliser Health Authority provides continuing care, home care and rehabilitation services.
666 5th Street South
Medicine Hat T1A 4H6
Phone: (403) 528-5633
Fax: (403) 529-8998

SALVATION ARMY FAMILY SERVICES

Provides counseling, support and basic human necessities.
16 Stratton Way
Medicine Hat T1B 3R3
Phone: (403) 527-2474

WE CARE HOME HEALTH SERVICES

Provides care from home making assistance, companion services, shopping and nursing homes.

SENIORS AND THE LAW: A RESOURCE GUIDE

459 4th Street South East
Medicine Hat T1A 0K5
Phone: (403) 529-2200
Fax: (403) 527-0975
Email:
medicinehat@wecarecanada.com

