

# Adult Guardianship and Trusteeship Act (AGTA)



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# Adult Guardianship & Trusteeship Act

Replaces 30-year-old *Dependent Adults Act (DAA)*



## Needs of Albertans are changing

- New Act balances autonomy and protection
- More choice for adults and their families
- More sensitive to the needs of the community and the health system

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# Agenda

- Context
- Key concepts
- Guiding principles
- Decision-making options
- Capacity assessment

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# Context



# Canadian Context

- Other provinces' and territories' legislation
- Legislative reforms of 70s, 90s, and 2000 on decision-making tools for incapable adults
- Societal shifts towards:
  - Personal liberty and Charter rights for all citizens
  - Increased advocacy by client populations
  - Families as decision-makers and providers of support
  - Government as oversight and decision-maker of last resort

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# Alberta Context

- Aging population
- Immigration: new Albertans
- Changing roles of families: sandwich generation who does not live close by
- Demands for more decision-making options tailored to individual needs
- Advancing technology and better access to information

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## What did the DAA provide?

- **Guardianship and Trusteeship:**
  - Court process for appointment
  - Family/friends as preferred authority over Public Guardian or Public Trustee
  - Certificates for appointment of Public Trustee
  - Interested parties can ask for a review of the Court Order



## Key Concepts



## Key Concepts

- **Capacity is on a continuum**
  - Capacity is the ability to make decisions for yourself
- **AGTA has new decision making options**
  - Designed to provide as much autonomy as possible
- **AGTA balances autonomy with protection**
  - More safeguards, new complaints and investigation process



## Guiding Principles



## Guiding Principles

- **Capacity is presumed**
  - Regardless of age, disability, etc.

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- **Communication method is not relevant to determination of capacity**
  - Hearing aid, sign language, technology



## Guiding Principles

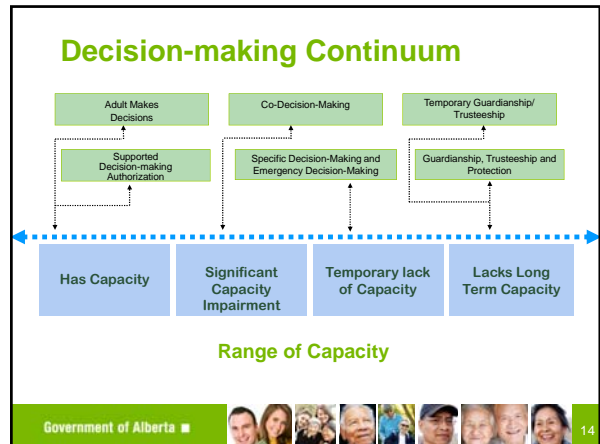
- **Autonomy is to be maintained through least intrusive and least restrictive measures**
  - New decision-making support options

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- **Decisions are to be based on best interests and how the person would have made the decision if capable**
  - What are the adult's values and beliefs?



# Personal Decision-making Options



### 1. Supported Decision-making *(new)*

Capable |-----| Incapable

- The adult is capable—they make their own decisions
- They choose someone to help them:
  - Find information
  - Make decisions
  - Communicate their decisions

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### 2. Co-decision-making *(new)*

Capable |-----| Incapable

- Adult's ability to make decisions is significantly impaired
  - Adult can make decisions with good support
- The adult and the co-decision maker make decisions together

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### 3. Guardianship *(updated)*

Capable |-----| Incapable

- Adult is incapable of making their own personal decisions
- Court appoints someone to make personal decisions on behalf of the adult
  - Usually a trusted friend or family applies
  - The Office of the Public Guardian can become the guardian as a last resort

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### Court Applications

- Application submitted to the Office of the Public Guardian, not the Court
- Need two references and a police records check
- Need a guardianship plan
- Someone from the Office of the Public Guardian will visit the adult to get their views

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#### 4. Specific Decision-making *(new)*

Capable |-----| Incapable

- Health care system needs a one-time decision:
  - health care treatment or
  - temporary admission to or discharge from a residential facility
- Adult is unable to make a decision (eg., stroke)
- Physician or nurse practitioner can choose “nearest relative” based on a ranked list to make the decision

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#### 5. Emergency Health Care *(updated)*

Capable |-----| Incapable

- Adult needs emergency health care
- Adult cannot provide consent
- Physician can make the decision
  - Where practical, physician must consult with a 2<sup>nd</sup> physician or health care provider

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#### 6. Temporary Guardianship *(updated)*

Capable |-----| Incapable

- Only for urgent or high risk cases
- Adult does not have capacity to make decisions
- Fast track to Court
- Temporary guardian appointed for 90 days

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## Financial Decision-making Options

### Financial Decision-making Options

- Decisions about finances and property
- No continuum of capacity
- Trustees submit a trusteeship plan as part of the application
- Trustees can live outside of the province
- Prudent Investor standard for Trustees
- Trustees may manage all financial/property affairs

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## Capacity Assessment

## Capacity Assessment

- AGTA allows for trained professionals to assess an adult's capacity for purposes of court-order applications. The assessment process:
  - Standardized
  - Focuses on cognitive and functional abilities
  - Targets types of decisions the adult will need to make
  - Identifies the level of assistance required
  - Makes recommendation on when capacity should be reviewed in situations when it is anticipated the adult will regain their capacity



## Protective Measures



## Protective Measures: Investigation

- There is a complaint and investigation process if a guardian, trustee, or co-decision-maker is failing to comply with the order, or is failing in their duties and this is likely to cause mental or physical harm or financial loss (including the loss of property)
- Complaints need to be written, signed, and dated



## Protective Measures: Investigation

- AGTA identifies restorative actions and remedies to resolve concerns
- Where there is extreme risk (life or death) to a represented adult with a guardian, the OPG can make a court application for the adult to be removed to a place of safety.



## New Choices under AGTA



	Planning Tools	Court Tools	Emergency Decision Making/Urgent decision making	Protective Measures
Personal Decisions	Personal Directives (Agent) Supported Decision Making Authorization (Supporter)	Co-decision making Order (co-decision maker) Guardianship (Guardian)	Emergency Decisions doctor + health care provider Specific Decision Making (specific decision maker) Temporary Guardianship (Guardian)	Non-court complaint process for personal Directives and co-decision makers and guardians. Court Review
Financial Decisions	Enduring Power of Attorney (Attorney)	Trusteeship (Trustee)	Temporary Trusteeship (Trustee)	Non court complaint process for trustees. Court Review



Questions?

