

COURT OF QUEEN'S BENCH OF ALBERTA
Q.B. CIVIL PRACTICE NOTE NO. 9
SURROGATE MATTERS
DEPENDENT ADULTS ACT PRACTICE NOTE

Note: The Surrogate Court Act was repealed April 1, 2001 and all matters are now dealt with by the Court of Queen's Bench.

The Dependent Adults Act was amended in 1996 (amendments to come into force on November 1, 1997). The amendments include the following:

Applications for guardianship and trusteeship and reviews of such orders may be made without the need to appear in Court, i.e., a desk procedure.

The maximum amount of costs which the court may award against the Crown has been set by regulation.

The Court may confer authority upon a trustee to consent to disposition of the dependent adult's spouse's homestead. This negates the necessity of a further application under the Dower Act.

A trustee acting for a dependent adult beneficiary can now consent to a sale of land by a personal representative. This may prevent an additional court application to approve a sale under the Devolution of Real Property Act.

1. Evidence on Applications

In order to provide consistency in the information provided to the court, the following forms should be used when making applications for guardianship and trusteeship. The Court may allow an applicant to provide the information in another format if deemed appropriate in the circumstances. The Offices of the Public Guardian and the Public Trustee do not need to use these forms as they are in a different position from other applicants.

A. Alternatives to Court Appointed Trustees

Applicants will be required to satisfy the Court that the proposed dependent adult's assistance with financial matters cannot be provided by an Informal trusteeship or by an enduring power of attorney. This question is addressed in the Trusteeship Needs Report.

B. Initial Applications

Initial applications require comprehensive information to allow the Court to make an informed decision. Particularly when the decision is being made on a desk application, counsel must ensure that the application includes:

The appropriate application form (see regulations under Dependent Adult Amendment Act).

i. Any required notices (see regulations under Dependent Adult Amendment Act).

ii. An Affidavit containing the following:

- a Report of a Physician or a Psychologist (Form 1);
- all necessary consents and undertakings;
- other material in support of this application;
- Application Information Summary;

- Functional Assessment form;
- Trusteeship Needs Report.

(See LESA Surrogate Forms Manual or materials prepared by the Offices of the Public Guardian and the Public Trustee)

Particularly important for guardianship applications is the functional assessment, and for trusteeship applications is the trusteeship needs report and undertakings by trustee **and** alternate trustees. (Samples are attached to this Practice Note. Other acceptable samples are contained in the LESA Surrogate Rules Manual and in the materials prepared by the Offices of the Public Guardian and the Public Trustee).

C. Applications for Review and Re-Appointment

The requirements for consistency and comprehensiveness apply equally forcefully to applications for review which are to include:

- i. The appropriate application form (see regulations under Dependent Adult Amendment Act).
- ii. Any required notices (see regulations under Dependent Adult Amendment Act).
- iii. An Affidavit containing the following:
 - a Report of a Physician or a Psychologist (Form 1);
 - all necessary consents and undertakings;
 - other material in support of this application;
 - a summary of decisions made by the guardian;
 - financial statements, if accounts are being passed concurrently with the review;
 - undertaking of trustee or alternate trustee (if undertakings were not filed at a previous application or review, or there is any doubt that the trustee continues to be aware of the undertaking or its contents).

(See LESA Surrogate Forms Manual or materials prepared by the Offices of the Public Guardian and the Public Trustee)

The Court desires consistency in both the content and format of the information presented for guardianship and trusteeship. Given the passage of time between an initial application and a review, counsel should ensure that the affidavit reflects any changes in the dependent adult's circumstances or needs. The information should present as complete a picture as possible.

2. Concurrent Applications

Applicants, should whenever possible, endeavour to bring their applications for review and for approval of accounts concurrently.

3. Obtaining Costs Against the Crown

Where applicants will be seeking costs against the Crown, the Application Form must indicate this (Alta. Reg. 46/97) and evidence of hardship must be provided by filling in Part V of the Application Information Summary which must accompany the Affidavit in support. For costs to be awarded against the Crown in an initial or review application, the Court must be satisfied that it would be a hardship to order costs against the applicant and the dependent adult.

4. Taxation of Costs

Applicants are reminded that Rule 623 states:

7. Does the proposed dependent adult already have a guardian or trustee? If so, provide name, address and date on which appointment is to be reviewed.

8. Has the proposed dependent adult signed an enduring power of attorney? If so, provide name and address of the holder of the enduring power or attorney.

9. Has the proposed dependent adult designated an agent in a personal directive? If so, provide the name and address of the agent.

PART II: INFORMATION ABOUT THE PROPOSED DEPENDENT ADULT'S FAMILY MEMBERS

1. Spouse: List name and address of the proposed dependent adult's spouse, if living.

2. Children: List in birth order showing full name, address and date of birth if under 18 years of age.

3. Parents of proposed dependent adult: List name and address, if living.

4. Siblings of proposed dependent adult: List in order of birth showing full name, address and date of birth, if under 18 years of age.

5. Provide name and address of other interested parties, if any.

PART III: INFORMATION ABOUT THE PROPOSED GUARDIAN AND/OR TRUSTEE

1. Name

2. Address

3. Date of Birth

4. Relationship to proposed
dependent adult

5. Occupation

6. Professional
qualifications/formal education
(if any)

PART IIIA: INFORMATION ABOUT THE PROPOSED ALTERNATE GUARDIAN AND/OR TRUSTEE

1. Name

2. Address

3. Date of Birth

4. Relationship to proposed
dependent adult

5. Occupation

6. Professional
qualifications/formal education
(if any)

PART IV: PERSONS TO BE SERVED

Provide the names and addresses of the following:

1. Nearest relative of the proposed dependent adult, or if that person is the applicant, the next nearest relative.

2. Person proposed as the guardian/trustee if that person is not the applicant.

3. Person proposed as alternate guardian/trustee.

4. If the person is a resident of an institution, the person in charge of the institution.

5. Attorney under an enduring power of attorney, if applicable.

6. Agent designated in a personal directive within the meaning of the *Personal Directives Act* , if applicable.

7. Guardian of the proposed dependent adult, if he is not the applicant.

8. Trustee of the proposed dependent adult, if he is not the applicant.

PART V: INVENTORY OF THE ESTATE OF THE PROPOSED DEPENDENT ADULT

(This information will be used to help determine who will pay for the costs of the application - complete only if claiming costs against the Crown)

- . Monthly income from all sources \$ _____

- . Cash and liquid assets, including bank accounts, investments and all assets which can readily be converted to cash \$ _____

- . Estimated value of real estate and personal property not mentioned above \$ _____

- . Estimated total debts \$ _____

Name of person completing this Report (Please Print)

Date

GUARDIANSHIP INFORMATION

PART II - FUNCTIONAL ASSESSMENT

1. Identifying Information

Name _____

Date of Birth _____

Language Spoken _____

Language Understood _____

R U A
 N A S L
 N E R U W
 / V E A A
 A E L L Y
 R Y L S
 Y

COMMENTS/EXAMPLES

1. General Information

A. Orientation

- i. is living in the present _____
- ii. knows where he is _____
- iii. recognizes friends & relatives _____
- iv. responds to his own name _____
- v. remembers routine daily activities _____
- vi. can function in familiar
environment _____
- vii. can function outside of familiar
environment _____

B. Receptive Communication

- i. can understand non-concrete concepts _____
- ii. can understand complex instructions
(i.e., 3 or more steps) _____
- iii. can understand simple instructions
(i.e., 2 or less steps) _____
- iv. can understand non-verbal _____

communications (e.g., signing,
gestures, etc.)

C. Expressive Communications

i. can speak and be understood

ii. responses to questions are relevant/

appropriate

iii. makes needs known

iv. can express non-concrete concepts

D. Retention

i. can recall current information for

a week

ii. can recall current information for

24 hours

iii. can recall current information

for 1 hour

iv. long-term memory intact

E. Ambulation

i. walks independently

ii. walks with assistance

iii. walks with supervision

iv. propels self in wheelchair

v. non-ambulatory

3. Decision Making

A. Where to Live

i. expresses satisfaction with current

living situation

— — — — — _____

ii. can access community supports

independently (e.g., ambulance, taxi, etc.)

— — — — — _____

iii. statements about current living

situations are consistent with reality

— — — — — _____

iv. current living situation is least

restrictive alternative

— — — — — _____

v. aware of other suitable residential

alternatives

— — — — — _____

B. With Whom to Live and Consort

i. recognizes associates whom he sees

frequently

— — — — — _____

ii. expresses preferences with regard

to associates & acts on these preferences

— — — — — _____

iii. recognizes situations of potential

abuse, avoids or changes these situations

— — — — — _____

iv. makes & keeps friends

— — — — — _____

v. exhibits inappropriate social behaviours

— — — — — _____

vi. is easily led by others regardless of

consequences

— — — — — _____

C. Social Activities

i. arranges social/recreational/leisure

activities for self

— — — — — _____

- ii. expresses preferences _____
- iii. isolation affects well being _____
- iv. participates in religious activities _____
- v. chooses associates _____
- vi. recognizes potential dangers in
social situations & avoids them _____
- vii. interacts in ways detrimental to
himself or others _____

D. Work Activities

- i. works (for pay or as a volunteer) _____
- ii. work is relevant (if N/A or never,
please explain) _____
- iii. is aware of rules of a worksite _____
- iv. works safely _____
- v. understands wages, benefits _____
- vi. aware of work alternatives _____

E. Educational, Vocational and Other Training

- i. education, vocation, and/or
training is relevant (if N/A or
never, please explain) _____
- ii. understands program choices _____
- iii. expresses preferences concerning
programs _____
- iv. initiates or terminates program
independently _____

v. aware of education, etc.

alternatives

____ _

F. Permits, Licenses, etc.

i. permits, licenses or similar authorization

are relevant (if N/A or never, please

explain)

____ _

ii. able to obtain licenses, etc.,

desired

____ _

G. Legal Matters

i. is aware of legal rights

____ _

ii. knows when rights have been violated

____ _

iii. can access legal counsel

____ _

iv. can comprehend Court proceedings

____ _

v. understands the implications of

signing a legal document

____ _

vi. signs forms without question

____ _

H. Health Care

i. participates in own care and treatment

____ _

ii. informs appropriate person about

health problems

____ _

iii. makes and keeps medical appointments

____ _

iv. can give informed consent

____ _

v. agrees to whatever treatment is

suggested by doctor/others

____ _

vi. understands the risks and benefits _____
of treatments, when explained _____

I. Day-to-Day Decisions

i. can maintain basic personal hygiene _____
& care independently _____

ii. is aware of common environmental _____
hazards (e.g., traffic, poison, freezing) _____

iii. can meet basic nutritional needs _____
independently _____

iv. can maintain a safe living environment _____

v. forgets regular routines _____

vi. can select appropriate attire _____

4. Assessor Information

Name _____

Signature _____

Title _____

Professional Designation _____

(if applicable)

Address _____

Relationship to Adult _____

City _____

Postal Code _____

Length of time you have known adult _____

Date of Completion _____

5. Additional Comments

GUARDIANSHIP INFORMATION

PART III - SUBSTANTIAL BENEFIT INFORMATION

1. Describe the individual's degree of dependence on helpers, friends and relatives, when decisions need to be made.

2. Is there a social support system (e.g., friends, family, etc.) available to assist with decision making?
Please explain briefly.

3. Do the decisions made with/by this support system (#2 above) meet the proposed dependent adult's needs and ensure a good quality of life (e.g., get adequate medical care, not at risk of abuse or victimization, etc.)?

4. Describe any instances of abuse, neglect or exploitation (by self or others).

5. What are the risks of physical/mental harm coming to the individual if a guardian is not appointed? Are the risk(s) imminent?

6. How would the person benefit if a guardian was appointed ? (For example, what services are not available because of the lack of a guardian?)

3. Does the proposed dependent adult have other regular sources of income? If yes, name the source.

4. List the approximate monthly amounts of the items referred to in 1 and 3, if known.

5. Does the proposed dependent adult work? If so, where and how are wages paid?

6. Does the proposed dependent adult have self employment income? If so, indicate general source and amount.

7. Provide address and give an estimate of value of all real property owned by the proposed dependent adult.

8. Does the proposed dependent adult have bank accounts? If so, provide addresses and estimated balances.

9. Does the proposed dependent adult have investments? If so, provide details and estimated values of stocks, bonds, Canada Savings Bonds, guaranteed investment certificates, term deposits, mutual funds and other financial assets.

10. Does the proposed dependent adult have any RRSP's or RRIF's? If so, provide details and estimated values or monthly payments.

11. Does the proposed dependent adult own a vehicle? If so, provide make, model and estimated value.

12. Does the proposed dependent adult own furniture and personal effects? If so, provide brief details of them and indicate any items that may be worth more than \$2,000.

13. Does the proposed dependent adult have any interest in any estate or trust? If so, provide details.

14. Has the proposed dependent adult been filing Income Tax returns? If so, provide year of last return and name of person who prepared it, if known.

15. Does the proposed dependent adult have any dependents? If so, provide names and addresses and information concerning any regular payments to them.

16. Indicate briefly the steps you will be taking to administer the proposed dependent adult's estate if a trusteeship order is obtained.

17. Does the proposed dependent adult have a will? If so, do you know where the original copy is located?

18. Is the proposed dependent adult involved in any on-going legal proceedings? If so, provide brief details.

19. Are there any matters which require immediate attention if you are appointed trustee? If so, provide details.

Signature

Name of person completing report _____ Date

UNDERTAKING OF PROPOSED TRUSTEE

I, _____ am applying to become trustee of the estate of

(name of proposed dependent adult)

I understand that I may not, without prior authorization of the Court of Queens Bench - Surrogate Matters, do the following:

1. Make a gift or donation to any person or organization.
2. Pay any amounts to myself as compensation for acting as trustee.
3. Make any loan to myself or any other person who does not deal at arm's length with the proposed dependent adult or me.
4. Derive any personal benefit from any property of the proposed dependent adult.
5. Permit any person with whom either the proposed dependent adult or I do not deal with at arm's length to derive any benefit from the property of the proposed dependent adult.

DATED at _____, Alberta, on _____.

(Signature of proposed trustee)

UNDERTAKING OF ALTERNATE PROPOSED TRUSTEE

I, _____ am applying to become trustee of the estate of .

(name of proposed dependent adult)

I understand that I may not, without prior authorization of the Court of Queens Bench, Surrogate Matters, do the following:

1. Make a gift or donation to any person or organization.
2. Pay any amounts to myself as compensation for acting as trustee.
3. Make any loan to myself or any other person who does not deal at arm's length with the proposed dependent adult or me.
4. Derive any personal benefit from any property of the proposed dependent adult.
5. Permit any person with whom either the proposed dependent adult or I do not deal with at arm's length to derive any benefit from the property of the proposed dependent adult.

DATED at _____, Alberta, on _____.

(Signature of proposed trustee)