



CLASSIC – Community Legal Assistance Services for Saskatoon’s Inner City Inc.

www.classiclaw.ca * 306-657-6100 * 123 20th St. W. * Monday to Friday, 9am to Noon, 1pm to 5pm

Adult Guardianship and Co-Decision Making

Why?

- An adult who does not have the capacity to make decisions may be exploited by others or may endanger his or her own financial and personal welfare. Appointment of a property or personal decision-maker is *one* means of protecting adults who are unable to make decisions for themselves.

Why not?

- Adults are presumed to have capacity, unless the contrary is demonstrated. Adults are entitled to choose the manner in which they live and to accept or refuse support, assistance or protection, as long as they do not harm themselves or others and have the capacity to make decisions about those matters. Adults are entitled to receive the most effective, but least restrictive and intrusive, form of support, assistance or protection, when they are unable to care for themselves or their estates.
- The appointment of a court ordered decision-maker always entails an intrusion into the autonomy of an adult, who would otherwise be presumed to have the capacity to make decisions for themselves.

Who can be appointed a decision-maker?

- Anyone, eighteen or older, who has an interest in the personal or financial welfare of an adult may apply. **Whenever possible, the applicant should have a long-term caring relationship with the adult.**

How does one apply for decision-making authority?

<http://www.justice.gov.sk.ca/Adult-Guardianship-and-Co-decision-making-Act>

- The Application Manual can be downloaded from the above. It provides an overview of the process and a series of questions to ask before considering an application.
- Depending on the type of authority requested an applicant is required to fill out a number of different forms. These can be filled out on your own, but may require the help of a lawyer.
- Applicants are required to “serve” copies of the application on various parties, including the adult, and file the application at the Court of Queen’s Bench for Saskatchewan.

Areas of Authority:

- A **personal** decision-maker has authority in matters of personal welfare but is limited to the specific matters listed in the court order. These matters may include where a person may live, whom they may associate with, control over social activities, work, or education, and decisions respecting health care, diet, dress, grooming, hygiene and other matters of daily living.
- A **property** decision-maker has authority over **all** financial and property matters not subject to any limitations or exceptions placed in the court order.

Types of Authority:

- A **co-decision-maker** will assist in making decisions and to make joint decisions *with* the adult.
- A **guardian** has the authority to make decisions *for* an adult.
- A **temporary guardian** has authority to make decisions *for* an adult to prevent serious harm.

Each type of authority can be applied to the two areas of authority, thus:

Personal co-decision-maker	Property co-decision-maker
Personal guardian	Property guardian
Temporary personal guardian	Temporary property guardian

A Co-Decision-Maker's Authority:

- A co-decision-maker may *advise* the adult respecting matters the court determines are within their authority and *share* with the adult authority to make decisions. A decision that requires signing by the adult, and is within the area of authority, is voidable unless co-signed by the co-decision-maker.
- A co-decision-maker **shall acquiesce in a decision** and shall not refuse to sign a document "if a reasonable person could have made the decision in question" and:
 - "no harm to the adult is likely" [personal]; or
 - "no loss to the adult's estate is likely" [property].

A Guardian's Authority:

- A personal guardian may make decisions on the adult's behalf. The adult **ceases to have authority** to make decisions with respect to matters that are within the personal guardian's authority.
- A property guardian may do anything respecting the adult's estate that the adult ceases to have the authority to do except make a will. A property guardian may pay out of the adult's estate any amounts necessary for the maintenance, education, or benefit of the adult's spouse or dependent children.

Duties of a Decision-Maker:

- All decision-makers have the duty to exercise their powers diligently, in good faith, and in the best interests of the adult in a manner that:
 - Protects the adults human and civil rights;
 - Encourages the adult's maximum participation in decisions, and independent action in all matters in which the adult is able; and
 - Limits the decision-maker's interference in the life of the adult to the greatest extent possible.
- Additionally, a property guardian or co-decision-maker must:
 - At the time of application or within three months of appointment make an accurate inventory of the adult's estate;
 - Provide an annual accounting of the decisions made, actions taken and consents given;
 - Provide a final accounting upon the death of the adult; and
 - File a bond undertaking to act properly as a property guardian or co-decision-maker.

Temporary Guardianship:

- Is meant for cases where an **immediate appointment** is necessary to protect from either serious physical or mental harm, or protect the adult's estate from serious damage or loss.
- Authority will always be limited to a period of not more than six months and should be further limited to those matters necessary to protect from serious harm.

Review of Appointments

- The court may review of the appointment on the application of the adult, the decision-maker, the public trustee and guardian, or a person with sufficient interest in welfare of the adult.