



Let's Talk: **ELDER ABUSE**

Facilitator's Guide

The contents of this booklet are provided as general information only. It is not legal advice. If you have a legal problem, you should consult a lawyer.

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Production of this booklet has been made possible by a financial contribution from Human Resources and Skills Development Canada.



Government
of Canada Gouvernement
du Canada

We would also like to thank the Alberta Law Foundation and the Department of Justice Canada for providing operational funding, which makes all of our projects possible.



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This Facilitator's Guide is accompanied by

- › *Let's Talk: Elder Abuse* Resource Manual—for participants, who also receive a full set of TipSheets
- › PowerPoint presentations—one for each Module
- › TipSheets—included in an appendix to this Facilitator's Guide

Audience

You will be facilitating a workshop on a topic of interest and concern to many. The audience for your sessions is assumed to be people who routinely work or volunteer with seniors. Tread carefully; there may be an older adult in attendance who has been or is being abused.

Workshop Content

Module 1: Elder Abuse, Capacity, and the Law

Abuse as a topic of discussion: begins with examples (as an icebreaker and “this is why you need to care”) and moves into the introduction of terms; clarifies definition of capacity (what brings us to this place) and then the law (which laws concern us and why). *2-hour session.*

1.1 Elder Abuse

- › Discussing who's at risk and how abuse presents itself

1.2 Capacity

- › How capacity is defined; who decides capacity; and how incapacity is recognized

1.3 The Law

- › How the laws come to us; the variety and types of laws that govern our behaviour; the court system; the laws that help to avoid or stop abuse; and how law enforcement can assist to keep seniors safe

Module 2: Planning Ahead

Steps that can and should be taken to prevent opportunities for abuse and some instances of what happens without certain instruments in place. *3-hour session.*

2.1 Planning While There's Still Capacity

- › Legal tools that can be set up by the older adult *before* his/her incapacity, and which are also to be used *before* incapacity
- › Joint property, supported decision-making, co-decision-making, informal trusteeships.

2.2 Planning for Incapacity

- › Legal tools that are set-up by the older adult *before* his/her incapacity, but which are to be used only after incapacity
- › Powers of Attorney, Personal Directives
- › Wills, which are set up by the older adult *before* incapacity, only to be used after that adult's death.

2.3 When Incapacity Is *Not* Planned For

- › Legal tools set-up by other people (i.e., not the older adult) *after* the older adult's incapacity, to be used during the remainder of incapacity
- › Trusteeship, Guardianship

2.4 Opportunities for Abuse Both Pre- and Post-Incapacity

- › Access to grandchildren, pets, and housing

Module 3: Let's Talk

Part of planning ahead, but an elaboration of what needs to be discussed between older adults, their families, and their caregivers. *1- or 1.5-hour session.*

3.1 Getting Past Resistance

- › Discussing the reasons for not wanting to talk about a time of incapacity and how to overcome them.

3.2 Opening Communication

- › Discussing the reasons why it is important to have open discussion, and setting things in place

3.3 Beginning the Conversation

- › Agenda setting and then beginning a conversation that may unfold over an extended period, depending on the circumstances.

Presentation Planning

These modules can be used in full and in this sequence in a one-day workshop; see the Full-Day Session following. If you are preparing for a half-day workshop, you may want to handle the modules out of sequence as suggested in the Half-Day Session below. You may also choose to use each module separately (and preferably sequentially); if so, begin by reading the proposed structure for the Stand-Alone Sessions.

Full-Day

The three modules can be offered in a one-day workshop. See the session plans for each module presented in the following pages. Use the PowerPoint modules in succession.

Half-Day

Offering a half-day session requires careful planning and some trimming of the content. You may not have the time for participants to have all the small group discussions suggested. You may choose to offer Modules 1 and 3 together in one half-day (three-hour) session and/or Module 2 in another half-day session. If presenting Modules 1 and 3 together, you will have to keep close watch on the timing of discussion in Module 3.

Stand-Alone

Offering only one module or the three modules in individual sessions allows you to spend time on parts of the modules of most importance to your participants.

Preparing

Begin by reviewing the TipSheets, the *Let's Talk: Elder Abuse* Resource Manual, and the PowerPoint presentations. Facilitator notes in the three PowerPoint presentations provide suggestions on how to lead discussion throughout the sessions and sometimes offer additional prompts. Reviewing them in advance will help you shape the sessions and engage the participants. They are not intended as a script.

Rehearsing the PowerPoint presentation will also demonstrate some of the onscreen animations (when items appear and disappear by click; how ideas build on the screen) and transitions between slides.

You can, of course, personalize the session plans and PowerPoint modules to make them your own. What's suggested can serve as a guide to your presentation.

You will see that the story of Linda and Fred is woven throughout the three modules. Only brief mention is made in Module 1 and it may not be necessary to introduce the whole family. You can share details of the family on a need-to-know basis; their full story is told in Module 3.

Presenting

You are encouraged to use PowerPoint's "Presenter View" on your computer when presenting the workshops. Having reviewed the facilitator notes there, you can now use them as reminders on how to guide discussion and highlight content in the *Let's Talk: Elder Abuse* Resource Manual.

In many cases, the PowerPoint slides offer a condensed version of the text from the *Let's Talk: Elder Abuse* Resource Manual. The manual should be seen as the source of discussion, while the PowerPoint slides serve as summaries.

Session Plan Module 1: Elder Abuse, Capacity, and the Law

<i>Suggested Time</i>	<i>Facilitator's Agenda</i>	<i>PPT Slides</i>	<i>Notes</i>
5 min	Introduction of self and general outline	1	
10 min	1.1 Small group work on “Is it abuse ?”	2	
10 min	Review “Is It Abuse?”– each case, ending with definition.	3–8	
5 min	Who’s at risk?	9	
15 min	What is abuse? Review of types, examples, and indicators.	10–15	
15 min	1.2 Why does capacity matter? Definition and “shades” of capacity.	16–19	
10 min	Who decides? Review role of lawyer, doctor, and assessor.	20	
5 min	Where does it say so? Review of incapacity forms	21	
5 min	1.3 Where is the law ?	22–25	
15 min	Laws that help to avoid or stop abuse. Identify pertinent laws and how they relate to the matter of elder abuse, assuring understanding of abuse, capacity, and source and jurisdiction of the law.	26–27	
15 min	Law enforcement in the form of help from the police	28–34	
5 min	Wrap-up	35–38	
2 hours			

Session Plan Module 2: Planning Ahead

<i>Suggested Time</i>	<i>Facilitator's Agenda</i>	<i>PPT Slides</i>	<i>Notes</i>
10 min	Introduction of self (unless following immediately after Module 1) and general outline	1-2	
45 min	2.1 Planning while there's still capacity	3-12	
45 min	2.2 Planning for incapacity	13-35	
45 min	2.3 When incapacity is not planned for	36-41	
10 min	2.4 Opportunities for abuse before and after	42-46	
10 min	Wrap-up	47-50	

3 hours

Session Plan Module 3: Let's Talk

<i>Suggested Time</i>	<i>Facilitator's Agenda</i>	<i>PPT Slides</i>	<i>Notes</i>
5 min	Introduction of self (unless following immediately after Module 2) and general outline	1-2	
5-10 min	3.1 Getting past resistance	3	
15-20 min	3.2 Communication	4-6	
15-20 min	3.3 The conversation begins...	7-22	
15-20 min	Is it or isn't it? Meet Linda and Fred	23-27	
5-15 min	Wrap up (questions, review, summary, evaluation)	28-31	

1 to 1.5 hours

APPENDIX

Tip Sheets

1. Elder Abuse Defined
2. Mental Capacity and Elder Abuse
3. Alberta Laws Concerning Elder Abuse
4. When Elder Abuse Involves the Police
5. Elder Abuse: Planning Ahead
6. Capacity Matters: Elements of Legal Tools
7. Elder Abuse: If Plans Haven't Been Made
8. Elder Abuse: Let's Talk

Elder Abuse Defined

Any deliberate action or lack of action that causes harm to an older adult is elder abuse.

Who's at risk?

Every case is unique, with different facts. Risk factors are many and various, possibly including:

- > a history of abuse between family members
- > dependency, e.g., being dependent on other family members
- > stress, caused by various factors
- > alcohol or drug use
- > greed
- > lack of knowledge about the degree of care and needs of an older person
- > lack of respect given to older people in a society that values youth, self-reliance, and energy
- > lack of professional awareness about the problem of elder abuse, so that it might continue undetected

What Is Abuse? Types, Examples, and Indicators

Physical Abuse

Examples	Indicators
<ul style="list-style-type: none">> pushing> pulling> threatening> confining> failing to provide> forcing or withholding medication> forced sexual activity	<ul style="list-style-type: none">> unexplained injuries; rope or belt marks; injury to scalp> frequent medical visits or delay in seeking treatment> history of accidents or injuries; repeated falls> depression, fear> signs of anxiety

NOTE: Some of these indicators may be present and the older adult is not being abused; these are merely **possible** examples and indicators of abuse.

Financial and/or Material Abuse

Examples	Indicators
<ul style="list-style-type: none">> stealing> forcing to change a will> misusing credit cards> forging a signature> withholding money> forcing or tricking> pressuring> refusing to return money or property> abusing powers	<ul style="list-style-type: none">> confused about finances> signing a document without knowing the consequences> lack of financial choices> family members moving in> unusual bank or ATM activity> income and standards misfit> possessions disappearing> sudden difficulty in paying bills> refusing to spend money without “permission”

NOTE: Some of these indicators may be present and the older adult is not being abused; these are merely *possible* examples and indicators of abuse.

ALSO NOTE: These actions may or may not be happening at the same time as other abuse (e.g., physical or psychological). The abuser could be perfectly pleasant and claiming to act in the older adult’s best interest while taking advantage of him/her financially. It may take some time before anyone realizes what is happening, and the older adult may be the only one who sees it.

Psychological Abuse

Examples	Indicators
<ul style="list-style-type: none">> making threats> eroding self-esteem> yelling or scolding> manipulating> forcing socialization or isolation> treating someone like a child> refusing access> not allowing someone to make decisions	<ul style="list-style-type: none">> becoming withdrawn, agitated, depressed> unusual weight gain or loss> unexplained paranoia> reluctance to talk openly> making inconsistent statements> appearing nervous> waiting for caregiver to respond> noticeable behaviour changes> low self-esteem> sleeping or not> making excuses

NOTE: Some of these indicators may be present and the older adult is not being abused; these are merely *possible* examples and indicators of abuse.

Neglect and/or Self-Neglect Abuse

Examples	Indicators
<ul style="list-style-type: none">> withholding care> failing to provide> inadequate supervision, lack of safety precautions> withholding medical services> unattended or restrained over time> failing companionship, social interaction, or intellectual stimulation	<ul style="list-style-type: none">> malnutrition, dehydration> not meeting necessities of life> medical treatment withheld> pattern of cancellations; avoiding appointments> lack of access to care> lack of required aids; lack of safety features> left alone> signs of being tied up> poorly maintained living space> untidy appearance; poor hygiene, unpleasant odour

NOTE: Some of these indicators may be present and the older adult is not being abused; these are merely **possible** examples and indicators of abuse.

Medication Abuse

Examples	Indicators
<ul style="list-style-type: none">> misuse of medications, prescriptions or mood altering substances> over-medication> not providing adequate or appropriate medication when needed or when prescribed	<ul style="list-style-type: none">> reduced activity> unusual behaviour> failure to fill prescriptions> reduced beneficial response from medications> depression> making inconsistent statements> appearing confused

NOTE: Some of these indicators may be present and the older adult is not being abused; these are merely **possible** examples and indicators of abuse.

ADDITIONAL RESOURCES ON ELDER ABUSE

- > The Centre for Public Legal Education Alberta has several resources on elder abuse. See the Oak-Net website at www.oaknet.ca/abuse.

Alberta Laws Concerning Elder Abuse

The main pieces of Alberta and federal legislation that relate most closely to elder abuse are:

Adult Guardianship and Trusteeship Act

- › standardizes issues around capacity assessment and allows for a range of decision-making options. These options recognize that adults have different levels of decision-making ability and that an adult's capacity may change over time.
- › options range from supported decision-making authorizations to guardianship and trusteeship orders.
- › Learn more at www.oaknet.ca/agta.

Family Law Act

- › provides a way to apply for a Support Order in cases of neglect
- › Learn more at www.oaknet.ca/neglect #SupportOrders.

Mental Health Act

- › does not specifically deal with elder abuse, but occasionally is used to remove a senior from an abusive situation if a police officer sees someone acting in a disorderly or dangerous manner who appears to have a mental disorder.
- › used only in extreme situations when the abuser is not mentally competent.

Personal Directives Act

- › allows people to create a legal document setting out their wishes for **personal** care after they are no longer able to make those decisions for themselves.
- › Learn more about Personal Directives at www.oaknet.ca/node/60.

Powers of Attorney Act

- › allows people to create a legal document appointing someone to manage their **financial** assets.
- › may or may not extend past incapacity.
- › Learn more about Powers of Attorney at www.oaknet.ca/content/power-attorney.

Protection Against Family Violence Act

- › protects all family members who are victims of family violence
- › makes three kinds of protective tools available: Emergency Protection Orders, Queen's Bench Protection Orders, and Warrant Permitting Entry.
- › Outside of this Act, Restraining Orders and Peace Bonds can stop an abusive person from contacting an older adult.
- › Learn more about these orders and how to apply for them at www.oaknet.ca/orders.

Protection of Persons in Care Act

- › promotes the safety of adults in publicly funded care.
- › among other specifications, service providers must take reasonable steps to protect clients from abuse, while providing care or support services.
- › More information can be found at www.health.alberta.ca/documents/PPC-Understand-PPCA.pdf.

Criminal Code of Canada

Some criminal offences under the *Criminal Code* apply to different types of elder abuse:

Physical

- > Assault (common assault, assault with a weapon or causing bodily harm, aggravated assault, and sexual assault)
- > Forcible confinement
- > Murder and/or manslaughter
- > Administering a noxious substance
- > Counselling suicide

Financial:

- > Theft, including theft by a person holding Power of Attorney, and theft with a credit card
- > Fraud and fraud with a credit card
- > Robbery
- > Breaking and entering
- > Forgery and using forged documents
- > Extortion
- > Stopping mail with intent
- > Criminal breach of trust and conversion by a trustee

Psychological

- > Intimidation
- > Uttering threats
- > Harassing telephone calls
- > Criminal harassment (i.e., stalking)

Neglect

- > Criminal negligence causing bodily harm
- > Breach of duties to provide necessities of life

For background on the Alberta Court System, visit justice.alberta.ca/programs_services/courts/Pages/chart_courts_alberta.aspx

Mental Capacity and Elder Abuse

Mental capacity is the ability to understand and appreciate the nature and consequences of one's decisions.

All legal adults (age 18+ in Alberta) are **presumed** to have mental capacity unless and until established otherwise, as required by law (usually by medical opinion and/or a judge's decision).

When we use the law as a tool against abuse, the **capacity** of the person being abused is a key factor in determining the options that are available.

Before losing capacity, an older adult can decide:

- > to share personal decision-making with someone
- > to share financial decision-making with someone
- > who will make personal decisions on his/her behalf after a loss of capacity
- > who will make financial decisions on his/her behalf after a loss of capacity

If an older adult loses capacity before these decisions have been made:

- > legal processes must be followed to determine who will make decisions on his/her behalf.

From Black and White to a Continuum

Legally, mental capacity is a black and white concept—according to the law, you are capable or you are not capable.

In **day-to-day life**, however, capacity is more of a continuum—clear capacity to make a decision at one end and the clear incapacity to make a decision at the other end, with a range in between.

Factors affecting capacity can be influenced by:

- > a medical condition
- > stress and/or anxiety in difficult circumstances (e.g., abuse) or events (e.g., death of a family member)
- > the effect of medication and/or forgetting to take medication
- > exhaustion and time of day
- > diabetes and fluctuating blood sugar levels
- > alcohol and recreation drug use

Who Determines Capacity?

Lawyers

- › Will ask questions to ensure that the person understands what he/she is signing.
- › Speak only to capacity at that very moment.
- › Do not sign any document indicating that the person has or has lost capacity.

Doctors

- › Determine whether a person has mental capacity.
- › Alberta *Personal Directives Act* prescribes a “Declaration of Incapacity” form that must be used to officially deem a person “incapable” of making personal decisions.
- › Declaration of Incapacity must be filled out and signed by one or two medical professionals, depending on the Personal Directive.
- › May make declarations of incapacity regarding Enduring Powers of Attorney.

Capacity Assessors

- › Determine capacity based on Capacity Assessment Process legislated in the *Alberta Adult Guardianship and Trusteeship Act*
- › CAP provides a very specific method of determining an adult’s cognitive and functional capacity.
- › CAP can be used at any time a decision about capacity is required.
- › Capacity Assessors may include medical practitioners (e.g., doctors), psychologists, registered nurses of various specialties, occupational therapists, and social workers, who meet established standards of conduct and undergo training and continuing education.

Incapacity: Where Does It Say So?

- › Alberta *Personal Directives Act*’s prescribed Declaration of Incapacity Form is used to activate a Personal Directive for personal decisions only.
- › Alberta *Powers of Attorney Act* does **not** prescribe a declaration form for the purposes of indicating when a Power of Attorney comes into effect for making someone’s financial decisions.
- › In the absence of such a form, options include:
 - asking the doctor to create a Declaration of Incapacity form
 - asking a social worker (who sometimes has a template)
 - asking a lawyer to create a Declaration of Incapacity form
 - using a designated Capacity Assessor

ADDITIONAL RESOURCES ON CAPACITY

- › *Guardianship*
CPLEA’s booklet on the *Alberta Adult Guardianship and Trusteeship Act*.
 - › *Trusteeships and Guardianships*
www.humanservices.alberta.ca/guardianship-trusteeship/opg-adult-guardianship-trusteeship.html
 - › *Personal Directives*
www.humanservices.alberta.ca/guardianship-trusteeship/opg-personal-directives.html
-

When Elder Abuse Involves the Police

Calling the police is an important way for the abused older adult to be protected and one way to prevent future occurrences.

Making a Criminal Complaint

The police may proceed as follows:

- > investigate the complaint
- > interview the abused person and possibly family members, caregivers, and neighbours who have evidence about the incident
- > may also interview the alleged abuser
- > gather evidence that is relevant to the complaint
- > may lay charges against the alleged abuser

Even if not for a criminal matter, the police can be very helpful in connecting seniors to various supports in the community—making referrals to other agencies as needed.

Victims' Services

- > provide information
- > offer practical assistance
- > extend emotional support
- > help communicate the victim's needs and concerns to the police or Crown Counsel

Laying charges

- > After the statement is completed, police will investigate the complaint.
- > If deemed a crime, police prepare a "Report to Crown Counsel" (RTCC).
- > Crown counsel reviews RTCC and decides whether to charge the accused with a crime.
- > With sufficient evidence, an information will be laid and the police will arrest the suspected offender.

The Accused

When an accused is arrested, the police will either

- > keep that person in custody
- or
- > let the person go on bail

The Process

Three types of criminal offences:

- > summary offences
 - > indictable offences
- and
- > a hybrid of summary and indictable offences

Summary Offences

These kinds of offences can be tried only in Provincial Court and include most minor offences in the *Criminal Code*, for example, harassing telephone calls.

Indictable Offences

These kinds of offences carry more severe penalties than summary offences. Examples include murder, manslaughter, and aggravated assault.

Summary or Indictable (“Hybrid”) Offences

For these offences, the Crown will choose whether the offence is tried summarily or on indictment.

- > If the Crown proceeds by way of indictment, the accused can then elect the mode of trial (jury or judge), as in the indictable option above.

ADDITIONAL RESOURCES ON ALBERTA LAW

- > More information about abuse of older adults, including links to related websites, can be found on Oak-Net at www.oaknet.ca/abuse
-

Elder Abuse: Planning Ahead

Several legal tools can be set up by the older adult **before** his/her incapacity that take effect immediately:

- > joint property (bank accounts and real property)
- > supported decision-making
- > co-decision-making
- > informal trusteeships
- > Wills

Joint Property (Bank Accounts and Real Property)

Use with caution. Remember that joint bank accounts and joint title on real estate mean all signing parties own the money or property equally. If one party dies, the survivor continues to fully own the account or property.

Supported Decision-Making

A supported decision-making arrangement could be very helpful for:

- > capable individuals who face complex **personal** decision-making
- > people who have difficulty communicating in English
- > people with mild disabilities such as hearing loss or mobility issues
- > people who have other communication difficulties
- > people who—due to a temporary condition—may only need a bit of help for a little while.

To complete such an arrangement, the older adult and the person who will be his/her supporter must:

- > agree on the need for the arrangement and
- > sign a Supported Decision-Making Authorization form that outlines the purpose and the kinds of decisions the older adult wishes to include.

Co-Decision-Making

A Co-Decision-Making Order is helpful for adults who:

- > have difficulty making **personal** decisions on their own but could make such decisions with the guidance and support of another person
- > have a close relationship with someone willing to provide decision-making support
- > do not have a guardian or a Personal Directive.

FOR MORE INFORMATION

For more information on supported decision-making and co-decision-making in Alberta:

- > contact the Alberta Office of the Public Guardian
 - > read CPLEA's booklet about the *Alberta Adult Guardianship and Trusteeship Act*.
-

Informal Trusteeships

An informal trusteeship is helpful for adults who:

- > may have diminished capacity, but could make **financial** decisions with the guidance and support of another person
- > have a close relationship with someone willing to provide **financial** decision-making support

Informal trusteeships are available at various service agencies:

- > Separate paperwork for a trusteeship needs to be completed at each agency or government department that allows for such an arrangement.
- > Federal government programs that allow for informal trusteeships are Canada Pension Plan (CPP), Old Age Security (OAS), and Veterans' Affairs.
- > In Alberta, informal trusteeships can be arranged through Assured Income for the Severely Handicapped (AISH), Alberta Seniors' Benefit, and the ministry responsible for employment and immigration.
- > Some care facilities may also allow informal trusteeships.

How to Prevent Misuse and Abuse

- > Carefully consider the options.
- > Choose assistance cautiously.
- > If a joint situation is a must, can you place limits?
- > Are these the best options for you at this time?
- > Can the bank or lawyer suggest other convenient options?
- > Research which agencies and government departments offer informal trusteeships and look into their procedures.
- > Consider including all reporting requirements.
- > If you think someone is being abused, trust your instincts and seek help.

Wills

Understanding the law around Wills can help older adults take steps to prevent abuse from happening. For more information, see CPLEA's publications on **Wills**.

How to Prevent Misuse and Abuse

- > Write a Will while you still have mental capacity.
- > Consult a lawyer.
- > Choose executors wisely.
 - Is the person willing to take on the job of executor?
 - Is the person trustworthy, responsible, and good at handling financial matters?
- > Keep the Will in a safe place or with a trustworthy person.
- > Be sure that the executor knows where the Will is.
- > Be wary of any suggestions that you change your Will.

Capacity Matters—Elements of Legal Tools

Why	Formalities	Capacity	Who Decides	Other Decision-Makers	Duration
Power of Attorney (PoA) To handle the donor's financial affairs. It may be to handle a specific task, for a pre-determined amount of time, or be general in nature.	Written, signed, dated, and witnessed. The person named as the attorney or that person's spouse cannot be a witness, nor can the spouse of the donor.	The donor must have full mental capacity.	This type of PoA is null and void as soon as the donor loses mental capacity.		The PoA may contain an end date or be valid only to handle a certain transaction. It will become null and void if the donor loses mental capacity.
Enduring Power of Attorney—Immediate To provide the donor with a trusted person to handle his/her financial affairs immediately and to continue into the future, after the donor loses mental capacity.	Written, signed, dated, and witnessed. The person named as the attorney or that person's spouse cannot be a witness, nor can the spouse of the donor. This PoA must state that it is to continue regardless of any mental incapacity or infirmity on the part of the donor.	The donor must have capacity at the time the Enduring PoA is signed. It takes effect immediately and continues after capacity is lost.	The donor can name a person or persons to decide about mental incapacity, including the person named as the attorney. He/she or they must sign a written declaration that the specified event has occurred.	If no one is named to determine incapacity or the persons named cannot or are incapable of determining mental capacity, then two medical practitioners may declare in writing that the specified event has occurred.	The Enduring PoA will continue until the donor revokes it, if still mentally capable, or if the donor or attorney dies, or if the attorney becomes the subject of a trusteeship order. Also, any interested party may apply to the court for an order ending an Enduring PoA.

Why	Formalities	Capacity	Who Decides	Other Decision-Makers	Duration
<p>To provide the donor with a trusted person to handle financial affairs only when the donor becomes incapacitated at some future time.</p>	<p>Written, dated, signed, and witnessed. The person named as the attorney, that person's spouse, and the spouse of the donor cannot be a witness. This PoA must state that it is only to spring into effect on the mental incapacity of the donor or some other specified event.</p>	<p>The Springing PoA will only come into effect when the donor loses mental capacity or when a specified event occurs.</p>	<p>A Springing PoA can name one or more persons to decide about capacity and that can include the attorney. There must be a written declaration that the specified event has occurred.</p>	<p>If no one is named to determine incapacity or the person(s) named cannot or are incapable of determining mental capacity, then two medical practitioners may declare in writing that the specified event has occurred.</p>	<p>A Springing PoA comes into effect at the time of a specified occurrence, usually mental incapacity. The donor may revoke it prior to losing capacity; it is null and void when the donor dies. Any interested party may apply to the court for an order terminating a Springing PoA.</p>
<p>To appoint an agent to make decisions about personal matters for the maker when he/she loses capacity.</p>	<p>Written, signed, dated, and witnessed. The agent and the agent's spouse cannot be witnesses nor can the spouse of the maker. There are other exceptions.</p>	<p>The maker must have the mental capacity to understand the nature and effect of a PD.</p>	<p>A PD can name a person to decide about mental capacity. That person must consult with a physician or psychologist before making the determination. He/she must sign a Declaration of Incapacity form, which must be kept by the physician or psychologist. A copy of this form must be given to the maker, among others.</p>	<p>If no one is named to determine incapacity, then two service providers, one of which must be a physician or psychologist may make the determination. They must sign a Declaration of Incapacity form, which must be kept by the physician or psychologist. A copy of this form must be given to the maker, among others.</p>	<p>The Personal Directive ends when the maker > dies, > revokes it, > regains capacity; when the agent dies or quits; or when a court orders that it ceases to have effect.</p>

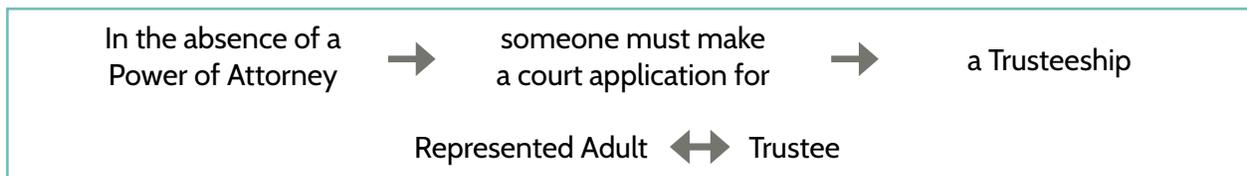
Why	Formalities	Capacity	Who Decides	Other Decision-Makers	Duration	
Supported Decision-Making	To appoint a supporter to help make decisions about personal matters. It cannot be used for help with financial matters.	A Supported Decision-Making Authorization form is completed. The form is available online and from the Public Guardian's office.	The supported adult must have mental capacity.			<p>A Supported Decision-Making Authorization ends</p> <ul style="list-style-type: none"> > when the supported adult signs a termination form, > when his/her capacity becomes further diminished and a Court appoints a Co-Decision-Maker, or > when he/she loses capacity altogether. <p>Then, a Personal Directive would come into effect or the court could appoint a guardian.</p>
Co-Decision-Making	To appoint a co-decision-maker to help make decisions about personal matters. It cannot be used for help with financial matters.	A court order is required to appoint a co-decision-maker.	The assisted adult has diminished mental capacity, but can still make decisions about personal matters with support.	The proposed assisted adult must take part in a Capacity Assessment Report (CAP), which is completed by a medical doctor, psychologist, or other health care professional trained to be a capacity assessor.	Prior to a court application, the paperwork is submitted to a Review Officer (RO) with the Office of the Public Guardian. The RO meets with the proposed assisted adult, notifies certain family members about the application, and prepares a report for the court. The RO cannot share the CAP with others.	<p>A Co-Decision-Making Order continues until</p> <ul style="list-style-type: none"> > the assisted adult signs a Withdrawal of Consent form with the court, > a Guardianship Order is granted, or > a Personal Directive comes into effect.

Elder Abuse: If Plans Haven't Been Made

Legal Remedies when the Best Options Are Not in Place

In the absence of a Power of Attorney →	someone, usually a family member, must make a court application to get a trustee, guardian, or both, appointed.
In the absence of a Personal Directive →	

Financial Issues: Trusteeship



Check for possible alternatives: Are there any informal trusteeships in place?

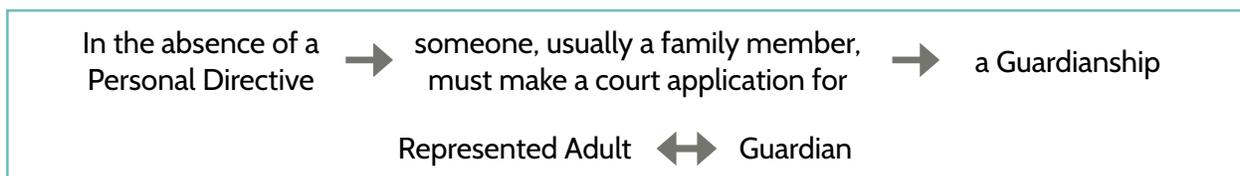
A candidate for trustee

- > must be at least 18 years of age
- > must consent to act as trustee in this situation
- > must satisfy the court that he/she is suitable and will act in the best interests of the adult
- > is often a family member or friend

Once appointed, a trustee

- > can do *almost* everything in relation to financial matters that the represented adult would do if he/she had capacity, with access to and control over all money and financial information of the represented adult
- > must keep careful records of all transactions
- > must always act in the best interests of the represented adult while in accordance with the Trusteeship Order and the Trusteeship Plan, as approved by the court.

Personal Issues: Guardianship



Check for possible conflicts: Is there a Personal Directive? Are there Supported Decision-Making Authorizations or Co-Decision-Making Orders in place?

Candidates for guardian

- > must be at least 18 years of age
- > must consent to act as guardian in this situation
- > must satisfy the court that he/she is suitable and will act in the best interests of the adult
- > should be someone familiar with the represented adult's values, preferences, opinions, and religious and cultural heritage
- > is often a family member or friend
- > should have been in regular contact with the proposed represented adult

Once appointed, a guardian—depending on the adult's needs and areas where his/her capacity is lacking—may make decisions regarding:

- > health care
- > where and with whom the adult can live
- > with whom the adult may associate
- > social activities
- > educational or vocational training and/or employment
- > any legal (non-financial) matters

FOR MORE INFORMATION ON TRUSTEESHIP AND GUARDIANSHIP IN ALBERTA:

- > contact the Alberta Office of the Public Guardian
 - > read the Centre for Public Legal Education's booklet about *The Adult Guardianship and Trusteeship Act*
-

To prevent the many challenges associated with having to apply for trusteeship or guardianship:

**Plan ahead
for yourself—and for any older adult in your care—
well before incapacity.**

Elder Abuse: Let's Talk

Getting Past Resistance

- › Every adult should plan in advance.
- › Planning in advance is the only way to maintain control over end-of-life decisions.
- › Planning for the future does not take decision-making power out of our hands in the present.
- › You can change your mind at any time.
- › You can always say, "My lawyer suggested I talk to you."

The Single Most Important Step in Advanced Planning: Talking!

Why?

- › Others may not fully understand your wishes after you lose capacity to express them.
- › It will help you think about what you want.
- › It will help your loved ones make difficult decisions.
- › It will save money.
- › It will save insecurity and grief.
- › It may even bring your family closer together.

Before beginning the conversation:

- › Ask permission to discuss the topic.
- › Know the legal tools and options.
- › Select an appropriate time and setting.
- › Be prepared for difficult moments.
- › Agree on an attendance list.
- › Agree on an agenda.

Beginning the Conversation

Communication principles:

- › One person needs to take the lead in the conversation.
- › Be good listeners and be patient.
- › Value each conversation participant and each contribution to the discussion.
- › Value each elder.

Suggested agenda:

1. Identify current advisors.
2. Describe current health status.
3. Identify current documentation.
4. Describe current financial picture and plan.
5. Identify difficult or complicated issues.
6. Planning ahead: Power of Attorney; Personal Directive; supported-decision-making, co-decision-making, informal trusteeships; Will.
7. Determine a shared understanding for post-capacity.
8. Next steps: What follow-up is necessary and who is responsible for it?

