



<b>Policy Number:</b> QA7.030	<b>Policy Section:</b> Quality Assurance	<b>Effective:</b> <b>Amended:</b> November 24, 2016
<b>Title:</b> Role of Formal and Informal Representatives		<b>Executive Sponsor:</b> Director, Quality Assurance

## 1. PURPOSE

The purpose of this policy is to clarify the roles and responsibilities of legal decision makers in assisting individuals with developmental disabilities receiving CLBC supports and services. It provides direction to CLBC facilitators and quality service analysts when the Public Guardian and Trustee, the Advocate for Service Quality, Court-appointed Committees, and Representatives appointed under the provisions of the *Representation Agreement Act* and trustees are involved with individuals we support.

## 2. DEFINITIONS

**Advocate for Service Quality:** The public official appointed by the Minister of Housing and Social Development to act as an independent advocate for individuals and/or their families receiving services from CLBC.

**Committee of Person/Estate:** An individual appointed by the Supreme Court of British Columbia under the *Patient's Property Act* to assume responsibility for managing either or both the personal and/ or financial and legal affairs of an adult who has been found "incapable". Committees have the right and the duty to protect the adult and/or their property and assume full decision-making responsibility on behalf of the adult.

**Guardian Ad Litem:** An individual who undertakes or defends a civil legal proceeding on behalf of an adult who is mentally incompetent.

**Representative:** A trusted relative, friend or advocate authorized by an individual with a developmental disability, under the provisions of a Representation Agreement (see Sections 7 or 9 of the *Representation Agreement Act*), to support them with decision-making or to make decisions on their behalf when they are incapable of making decisions independently.

**Temporary Substitute Decision- Maker (TSDM):** An individual chosen under the *Health Care (Consent) and Care Facility (Admission) Act* (HCCCFA) to provide a health care practitioner with consent to health care on behalf of an adult who is incapable of consenting on their own.

### 3. POLICY

Adults with developmental disabilities have the same rights and responsibilities under the law as all citizens and are expected to act and make decisions on their own behalf. When this is not possible, there are specific legal mechanisms that authorize decision-making to be assigned to another person. In these circumstances, there are firm parameters on how CLBC staff, service providers, and families support individuals. It is critical that CLBC facilitators and quality service analysts are familiar with the applicable statutes and the range of legal decision-makers.

- CLBC facilitators can assist individuals in managing their affairs particularly through the planning process but must ensure that they do not assume the role of a Committee, Representative or other legal decision-maker.
- Service providers may play an active role in supporting individuals to participate fully in their communities but they cannot assume the decision-making rights of any individual. Roles and responsibilities must remain clear so that the ability to 'speak for' an individual is not compromised by either the risk of liability or the potential to benefit from any decisions made on behalf of that individual.
- A family member, friend, relative or a member of an individual's personal support network or in some situations, a representative of a community association may assume a supportive, informal role in assisting an individual with planning, decision-making and activities of daily living. It is important to be aware that although these individuals may be able to assist adults in managing their personal or financial affairs, they have no legal authority, rights or responsibilities towards the individual unless legally authorized or appointed as described above or, in the case of representation agreements, as a monitor of the representative authorized by an individual.

CLBC staff work with Committees or Representatives to support the best interests of individuals and to prevent conflicts of interest concerning CLBC supports.

### 4. PROCEDURES

#### Decision Maker Roles

4.1 CLBC facilitators and quality service analysts must ensure families, members of an individual's support network, and service providers are familiar with the roles of legal decision makers, when appropriate. *Appendix One "Roles and Responsibilities of Legal Decision Makers"* can be provided for additional information.

4.2 CLBC facilitators, when appropriate, must ensure families and support networks are aware of the parameters of their supportive relationship with an individual.

4.3 CLBC quality service analysts, when appropriate, must ensure service providers are aware of the parameters of their supportive relationship with an individual.

- CLBC funded agencies should be advised that it is not appropriate for their employees to assume the role of formal legal representatives as outlined above for any individuals supported by that agency.
- Service providers must not assume responsibility as Power of Attorney or trustee for the financial affairs of individuals they support and licensed resources should also ensure that they comply with the specific requirements of the *Community Care and Assisted Living Act* respecting these and other limitations.

- Pursuant to the HCCCFA, service providers who are NOT family members cannot be chosen as Temporary Substitute Decision-Makers by a health care practitioner as prescribed unless specifically authorized by the Public Guardian and Trustee. The Public Guardian and Trustee limits the scope of decisions to minor or routine health issues.

## **Referrals to the Public Guardian and Trustee**

**4.4** Where a CLBC facilitator or analyst is concerned that an individual is unable to act on his or her own behalf and has no relatives or friends to assist, it may be appropriate for a facilitator to make a referral to the Public Guardian and Trustee. The Public Guardian and Trustee can assist in reviewing the issues, the degree of incapability and options for supporting the individual. The involvement of the Public Guardian and Trustee in these circumstances relates primarily to the degree of risk faced by an individual associated with their capacity to make informed decisions. It does not replace the roles and responsibilities of CLBC acting as a designated agency under the provisions of the *Adult Guardianship Act*.

### **Notifications**

**4.5** Where the Public Guardian and Trustee is administering the estate of an individual and CLBC staff is aware of a change in that individual's financial status, e.g., a death in the family, the Public Guardian and Trustee should be notified immediately. The Public Guardian and Trustee should also be notified by a quality service analyst of the death of an individual for whom they are Committee to confirm plans for burial and dispersal of assets.

**4.6** Committees or Representatives must be notified by CLBC facilitators about and be involved with planning and all processes concerning the supports the individual receives from CLBC.

### **Prevention of Conflict of Interest**

**4.7** Where a person acting as Committee of Person/Estate or as a Representative applies to be a service provider for the individual they are representing, CLBC must ensure that this arrangement is in the best interests of the individual and that a comprehensive safeguard strategy is in place to prevent conflict of interest prior to approval by the Integrated Service Manager. The Committee or Representative must comply with all policies, procedures, and standards that apply to the provision of the service provided.

**4.8** To reduce the potential for actual or perceived conflict of interest, CLBC will include specific accountabilities in its service contracts with Committees or Representatives acting as service providers. CLBC staff's ability to visit or speak with an individual or to review services must not be constrained by the Committee or Representative.

## **5. DOCUMENTATION**

The facilitator will document information in the individual's PARIS file when decision making is assigned to a legal decision maker.

The quality service analyst will document information in the individual's PARIS file when a person acting as Committee of Person/Estate or as a Representative is approved to be a service provider for the individual.

## 6. PRACTICE

### Safeguard strategy to prevent potential conflict of interest

6.1 Where a Committee or Representative acts as a service provider, safeguards to prevent a conflict of interest could include using a host agency to manage the support and supervision of a home sharing resource, supporting the development of a microboard, building capacity of a personal support network or ensuring, in the case of a Representation Agreement, that a monitor is appointed. The intent is to prevent potential conflict of interest while providing sufficient oversight to ensure that individuals do not become isolated, have access to external supports, and have the opportunity for involvement with others outside their immediate environment.

### Conflict or Disagreement about “Best Interests”

6.2 Where there is a disagreement between CLBC, family, service providers or others involved in an individual’s network, every effort should be made to determine or reflect the wishes of the individual involved. The Advocate for Service Quality is also available to provide support and assistance in resolving outstanding issues.

## 7. REFERENCES

*Adult Guardianship Act*

*Patient Property Act*

*Representation Agreement Act*

*Public Guardian and Trustee Act*

*Health Care (Consent) and Care Facility (Admission) Act*

Eligibility for CLBC Supports and Services Policy

Adult Guardianship Policy

B.C Supreme Court Rules, Rule 6 Persons under Disability

Home Sharing Policies, Standards and Monitoring Tools

The Public Guardian and Trustee may be appointed to act as Committee of Estate and, more rarely, of Person where an individual is unable to act on his or her own behalf, there are no family members or friends prepared or suitable to assume this role and there are reasons to justify this level of intervention in an individual’s financial or personal affairs. Depending on what form of Committeeship is being requested, the appointment can be made either through the Courts or on the basis of a Certificate of Incapability.

## APPENDIX ONE: Roles and Responsibilities of Legal Decision Makers

### **Committee of Person or Estate:**

To become Committee of Estate, an applicant must provide evidence to the Supreme Court of British Columbia of an adult's incapacity to manage his or her financial and legal affairs. As Committee of Estate, the individual appointed takes full responsibility for such financial and legal matters as administering income; banking; paying expenses; selling real estate; entering into contracts; or hiring counsel to pursue or defend any lawsuits on behalf of the adult.

To become Committee of Person, an applicant must apply to the Supreme Court of British Columbia with evidence based on professional assessment of an adult's incapacity and reasons for the application. A Committee of Person is appointed when a significant decision must be made about such personal matters as placement in a facility, consent to complex medical treatment, or to protect the best interests of the adult.

### **Representatives:**

Authority for an individual to act as an adult's Representative is covered by the provisions of the *Representation Agreement Act*. Representatives assist individuals in making decisions and choices about a range of personal, health and financial matters.

### **Public Guardian and Trustee:**

The PGT may be appointed to act as Committee of Estate and, more rarely, of Person where an individual is unable to act on his or her own behalf, there are no family members or friends prepared or suitable to assume this role and there are reasons to justify this level of intervention in an individual's financial or personal affairs. Depending on what form of Committeeship is being requested, the appointment can be made either through the Courts or on the basis of a Certificate of Incapability.