

Guide for Capacity Assessors

ADULT GUARDIANSHIP AND TRUSTEESHIP ACT



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1. Who should read this guide?

This guide provides detailed information about capacity assessments under the *Adult Guardianship and Trusteeship Act* (AGTA). The guide is intended for those health professionals who are designated as capacity assessors (physicians and psychologists and other health professionals designated by the Minister of Alberta Seniors and Community Supports).

The Office of the Public Guardian (OPG) can provide further information about capacity assessments.

2. Background

The regulations under the AGTA specify the required process for conducting capacity assessments, the Minister of Seniors and Community Support's guidelines for conducting capacity assessments, the standards of conduct for capacity assessors, the fees that may be charged and the forms for capacity assessment reports.

The regulations are intended to ensure that capacity assessments under the AGTA will be conducted in a consistent and rigorous manner since a determination of incapacity will mean that a substitute may be appointed to make some or all of an adult's personal and/or financial decisions.

The Minister's guidelines for conducting capacity assessments (as represented by this guide) have been established in consultation with the professional colleges whose members have been designated to conduct capacity assessments.

The guidelines were established with the following underlying principles in mind:

- a capacity assessment may be conducted only if the need for the assessment has been established;
- an adult has the right to refuse to undergo or to continue with a capacity assessment;
- an adult has the right to have a person present to assist the adult in feeling comfortable and relaxed when undergoing a capacity assessment. The person needs to comply with any directions of the capacity assessor and may be asked to leave if the person does not comply with a direction of the capacity assessor;
- an adult has the right to have the assistance of an interpreter or the use of a device to assist the adult to communicate in order for the adult to be able to fully demonstrate his or her capacity during the capacity assessment;

- an adult shall be given the opportunity to undergo a capacity assessment at a time when and under circumstances in which the adult will be likely to be able to demonstrate the adult's full capacity; and
- a capacity assessor shall make reasonable efforts to obtain any information that is relevant to the assessment of the adult's capacity.

3. What is Capacity?

In respect to the making of a decision about a personal or financial matter, it is the ability to understand the information that is relevant to the decision and to appreciate the reasonably foreseeable consequences of

- a decision, and
- a failure to make a decision.

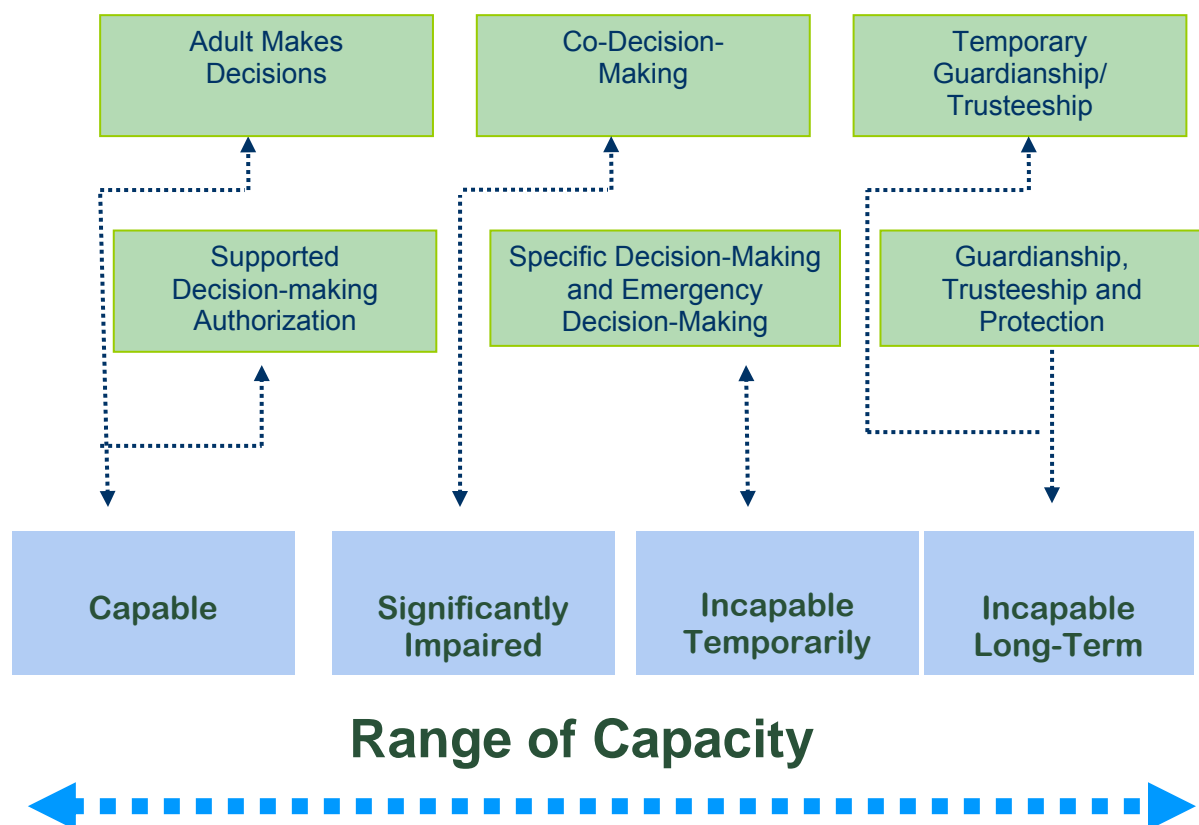
Capacity is determined by the Courts and is **not** a medical diagnosis. Capacity assessments provided by capacity assessors are a **clinical opinion** provided to the Courts. In guardianship, trusteeship and co-decision-making applications, capacity is a legal decision made by the Court, based on evidence from the capacity assessment report.

4. Capacity Assessment on a Continuum

Mental capacity is the ability to make decisions for yourself. However, there is a range of decision-making ability between capable and incapable. The continuum approach provides, in one piece of legislation, a range of options that relate to different decision-making situations.

The continuum moves from full capacity (supported decision-making authorization) through significantly impaired capacity (co-decision-making order), then temporary incapacity (specific decision-making and temporary guardianship or trusteeship orders) and finally, to incapacity on a long-term or permanent basis (guardianship or trusteeship orders).

Continuum of Decision-Making Choices



The options on the continuum address the reality that adults may have different levels of decision-making ability at different points in their lives. The new AGTA continuum avoids an “all or nothing” approach to mental capacity and substitute decision-making in relation to personal matters. The continuum allows adults to receive assistance according to their needs and to maintain as much autonomy as possible for as long as possible.

For financial matters, there is no continuum. The adult is either capable of making financial decisions or assessed as incapable.

The continuum includes the following options, from least to most intrusive:

- **Co-decision-making orders for personal matters:** Co-decision-making orders come into play if an adult is assessed as having a significant impairment, but can still make decisions with assistance. A co-decision-making order is a Court order and the adult must agree to it. This provision will be useful for families where there is a trusting relationship; for example, a wife assisting her husband who is in the early stages of

dementia. Here, the adult who is the subject of a Co-Decision-making Order is referred to as the **assisted adult**.

- **Specific decision-making provisions:** This provision comes into play when an adult has no personal directive or guardian. It covers situations where a health professional (physician, nurse practitioner, and dentist for dental treatment only) believes an adult cannot provide informed consent on a decision related to health care or temporary admission to or discharge from a residential facility.

In these circumstances a health professional can select a relative of the adult to make the decision or the Office of the Public Guardian as a last resort. Prior to the AGTA in Alberta, there was no legal mechanism to cover situations where an adult temporarily lacks capacity to make these types of decisions and the only option available to families and health professionals was guardianship, if the person did not have a personal directive.

- **Emergency health care:** This provision allows a physician to provide emergency health care to an adult without consent if the health care is necessary to preserve the adult's life, prevent serious physical or mental harm to the adult, or to alleviate severe pain. The physician must be satisfied that the adult lacks the capacity to consent or refuse to consent to the health care.

The lack of capacity could be due to drug or alcohol impairment, a complete or partial lack of consciousness or another cause. The physician, if practicable, should get a written second opinion from either another physician or a registered nurse or nurse practitioner and if there is agreement, the physician may provide the emergency health care. This provision does not allow the physician to provide emergency health care if the adult, while capable and over 18 expressed a wish or instruction applicable to the circumstance and does not later change their mind.

- **Temporary guardianship and trusteeship orders:** These provisions apply to situations where an adult is believed to lack capacity and is in imminent danger of death or serious harm or financial loss if someone does not make a decision to prevent the death, harm or financial loss. Here, the adult who is the subject of a guardianship or trusteeship order is referred to as the **represented adult**.

- **Guardianship (personal matters) and trusteeship (financial matters) orders:** These options remain available for adults assessed as incapable, but the application process allows for improved screening and information provision for prospective guardians and trustees. The new process also ensures the adult's views are included in a report to the Court, if possible.

The AGTA also provides the Court with additional guidance when granting an order. For example, the Court must consider whether less intrusive options could meet the person's needs. Here, the adult who is the subject of a guardianship or trusteeship order is referred to as the **represented adult**.

5. Guiding Principles

The AGTA is based on a set of guiding principles that are the foundation for interpreting and administering the Act. These principles apply to capacity assessments just as they do to all of the other parts of the AGTA. The guiding principles are:

1. **An adult is presumed to have the capacity to make decisions until the contrary is determined.**
 - Until the Court, based in part on the opinion of the capacity assessor, has determined that an adult does not have the capacity to make decisions or that an adult's decision-making capacity is significantly impaired, the adult is presumed to be fully capable of making his or her own decisions.
 - All adults are presumed capable of making their own decisions until the contrary is determined. Capacity is presumed, regardless of age, disability, etc. Even if you are 105 years old, the law presumes that you have the ability to make your own decisions, unless the Courts demonstrate otherwise.
 - The onus is on the capacity assessor to demonstrate that an adult lacks capacity, not on the adult to demonstrate capacity.
2. **An adult is entitled to communicate by any means that enables the adult to be understood, and the means by which an adult communicates is not relevant to a determination of the adult's capacity.**
 - Just because an adult may have difficulty communicating due to language or literacy problems or because of a physical impairment, this alone does not mean that the adult is incapable of making decisions about personal or financial matters. In fact, as part of the

capacity assessment process, capacity assessors must determine whether an adult needs the assistance of a translator, or a person or device to assist them in communicating and, if so, make appropriate arrangements to have the person or device available.

- When assessing capacity, the capacity assessor should be prepared to provide support to help the person communicate. Someone who can't hear, for instance, may not perform well in a capacity assessment without an interpreter or assisted device, but that doesn't necessarily mean they can't make their own decisions.

3. An adult's autonomy must be preserved by ensuring that the least restrictive and least intrusive form of assisted or substitute decision-making that is likely to be effective is provided.

- Before making a co-decision-making, guardianship or trusteeship order, the court must ensure that a less restrictive and less intrusive alternative measure has been considered but would not likely be or has not been effective in meeting the needs of the adult. For example, before appointing a co-decision-maker, the court must consider whether a supported decision-making authorization would be more appropriate or if that option has already been tried and is no longer effective. Before appointing a guardian, the court must consider whether a co-decision-making order would effectively meet the adult's decision-making needs.
- Taking away an adult's independence in making their own decisions is a very serious step. Allowing an adult to retain his or her autonomy for as long as possible is key in this legislation. So, instead of assuming that when someone appears to be incapable of making decisions, they need a guardianship order, the new Act offers some new options that may allow the adult to retain more independence for a longer period of time.

4. In determining whether a decision is in an adult's best interests, consideration must be given to any wishes expressed by the adult while capable and any values and beliefs known to have been held by the adult while the adult had capacity.

- A decision-maker must always consider how the adult would have made the decision if he or she were still capable.
- Guardianship and trusteeship are a last resort and there must be evidence that these appointments are absolutely necessary. Decisions must be made in the adult's best interests. We must take into account the wishes, values and beliefs of the adult, if they are known. That

means that decision-makers should try to make decisions that reflect what the adult would want, not necessarily what the decision-maker would want.

- A risky decision does not necessarily mean that a person is incapable. Stockbrokers, soldiers, medical professionals and patients make them every day. It is the process—or the lack of process—by which these decisions are made that may call into question the capacity of a patient to make that decision.

6. Common Pitfalls

- The capacity assessor fails to understand that capacity is not “all or nothing”, but is specific to a decision or to an Area of Concern.
- Health care providers, family and others fail to ensure that the adult has been given relevant information about a proposed decision before the adult is asked to make a decision.

7. Who is authorized to conduct Capacity Assessments?

Under the *Dependent Adults Act*, capacity assessments have been performed by a physician or a psychologist. Under the AGTA, that list has been expanded to include other health care professionals, (social workers, occupational therapists, registered nurses and registered psychiatric nurses as well as physicians and psychologists) once they have met certain eligibility requirements which are set out by the Regulations.

The Minister of Alberta Seniors and Community Supports has the authority to designate capacity assessors, to establish training requirements and other qualifications for capacity assessors, and to establish standards for the conduct of persons designated as capacity assessors.

The roster of health professionals who have completed the required training and have been designated by the Minister can be found on the Ministry’s website at: www.seniors.alberta.ca/opg or by calling the Office of the Public Guardian at: 1-877-427-4525.

8. What are the standards of conduct for a capacity assessor?

A person who is designated as a capacity assessor must:

- comply with the guidelines for conducting capacity assessments established by the Minister;
- exercise care and diligence when conducting capacity assessments;
- act in good faith in conducting a capacity assessment;
- Have regard to the fact that the adult
 - is presumed to have the capacity to make decisions until the contrary is determined, and
 - is entitled to communicate by any means that enables the adult to be understood, and the means by which the adult communicates is not relevant to a determination of whether the adult has the capacity to make a decision when conducting a capacity assessment; and
- maintain his or her professional competency to conduct capacity assessments.

9. Can the Minister revoke a Designation?

The Minister may revoke the designation of a capacity assessor:

- if the Minister is satisfied that the person is no longer conducting capacity assessments;
- if the Minister is satisfied that the person is not conducting capacity assessments in accordance with the Act and the regulations; or
- for any other reason that the Minister considers warrants the revocation of the person's designation as a capacity assessor.

10. What is the Process for Conducting a Capacity Assessment?

Capacity assessment is a process by which an individual's ability to make decisions is assessed. A capacity assessment relating to co-decision-making, guardianship or trusteeship must be conducted in accordance with sections 3 and 4 of the Regulation and the guidelines established by the Minister.

A capacity assessment done under section 96 of the AGTA must also comply with the Regulations and the Minister's guidelines. The process for health care providers to assess capacity for specific decision-making is also set out in the Regulation (sections 19, 20, 21) but is not addressed in this guide.

The forms for capacity assessment reports are regulated. Form 3 is used for capacity assessments for co-decision-making applications; Form 4 is used for

capacity assessments for guardianship and/or trusteeship applications. Form 10 is used for section 96 capacity assessments.

Unless an application contains a request for the Court to accept a capacity assessment report that was conducted earlier (Court's discretion), a capacity assessment report submitted in respect to a co-decision-making, guardianship or trusteeship application must be dated not more than 6 months before the date the application is started.

The process for conducting capacity assessments is intended to be more respectful of an adult's rights under sections 7 and 15 of the **Canadian Charter of Rights and Freedoms**. It is also intended to be more rigorous and specific to the Area(s) of Concern, rather than an all or nothing assessment of an adult's competency. Under the AGTA, there are eight Areas of Concern that have been identified (health care, accommodation, choice of associates, participation in social/leisure activities, personal legal matters, participation in employment activities, participation in educational, vocational or other training, and financial) and a capacity assessment can look at any one or all of these Areas of Concern. It is possible for some to have capacity in one area and not another. For example, someone might struggle to understand the complexities of a health care decision, but still be capable of making decisions about their social activities and finances.

The assessment process for declarations of incapacity as outlined in the *Personal Directives Act* (as amended in 2008) is similar to the process specified under the AGTA regulations but cannot be substituted for the assessment process under the AGTA.

The capacity assessment process under the AGTA consists of three stages:

- **a pre-assessment process** (explaining the purpose and significance of the assessment and the adult's rights),
- **a medical evaluation** (conducted by a medical practitioner to rule out temporary, reversible medical conditions affecting capacity), and
- **a formal interview** with the adult conducted by the capacity assessor **using a cognitive and functional inquiry** methodology. This means the capacity assessor asks questions to see if the adult can understand information from a reasoning or executive perspective and can also apply it to real life situations. The formal interview should only focus on assessing those decision-making areas identified as warranting assessment. The assessor may determine that other Areas of Concern that were not previously identified also need to be assessed.

After the assessment has been conducted, the capacity assessor will complete the appropriate **Capacity Assessment Report Form (Forms 3, 4 or 10 in the Regulation)**. The forms must contain all of the information required. The Report

forms are intended to be a summary of the findings and opinions of the capacity assessor and to document the manner in which the capacity assessment was conducted.

The three Report Forms are similar except in the following ways:

- In Form 3, the assessor is determining whether the adult's decision-making ability is significantly impaired, rather than lacking (Form 4), and must also determine whether the adult has the capacity to choose a co-decision-maker and to consent to the co-decision-making order;
- In Form 10, the assessor is only assessing the adult's ability to give or refuse to give consent to a decision about proposed health care or proposed admission to or discharge from, a residential facility under the specific decision-making provisions of the Act.

11. Capacity Assessment Process

11.1 Pre-Assessment

The capacity assessor must ensure that he or she has been advised of the reasons why the capacity assessment has been requested and has been provided with a description of any event that gave rise to the request for a capacity assessment.

There must be a **cause for concern** that makes the assessment necessary (e.g. the adult is displaying symptoms of Dementia and is having difficulty remembering when and how to pay household expenses or when and how to take necessary medications). A cause for concern could be any event or circumstance that potentially places the individual or others at risk and that seems to be caused by an inability to make decisions.

This may lead to action on the part of a health care professional or family. Family, home care personnel, and/or the person requesting the capacity assessment are usually good contact points for collecting information about adult. These persons can relay the presenting concerns that are causing the assessment.

They may also be able to describe any major demands the person faces. However, while this type of information is valuable, it should only be seen as background information. Preliminary information or apprehensions brought forward must always be balanced against the person's perceptions of their own situation.

The capacity assessor should obtain only enough background information to target the interview to the relevant Areas of Concern (i.e., personal matters

and/or financial matters); (See section on Access to Personal Information on page 22 of this guide).

11.2 Assessing Risk

The capacity assessor should assess the severity of any risks to the adult or to others that have been identified. Causes for capacity assessments often arise from safety concerns respecting an adult's level of functioning in their usual environment.

The higher the level of risk to the adult or to others, the stricter the standard applied to determine options to minimize or remove that risk. The assessor should also determine whether other, less intrusive measures have already been tried but failed to reduce the risk and whether the appointment of a guardian, trustee or co-decision-maker may resolve the problem.

11.3 Explanation of Purpose, Significance and Rights

The capacity assessor must make a reasonable effort to meet with the adult and, unless the adult is non-responsive, explain to the adult the purpose and nature of the assessment and the significance of a finding of incapacity. The capacity assessor must also explain the adult's right to refuse to undergo or continue with the assessment and the adult's right to have the assistance of a person or device – for communication or comfort – but not to interfere with the assessment.

The capacity assessor must determine whether the adult has refused to be assessed, understands the purpose of the assessment and his/her right to refuse, appears to be capable of consenting, and has consented or, if the adult appears not to be capable of consenting, the capacity assessor must determine if it is in the adult's best interests to conduct or continue the assessment. If the adult refuses to undergo or continue with the assessment, the capacity assessor must stop the assessment and note this on the capacity assessment report.

The capacity assessor must also determine whether it is necessary for the adult to have or whether the adult has requested the assistance of a person or the use of any device to assist in communication or to make the adult feel comfortable and relaxed and then take reasonable steps to accommodate that need.

11.4 Prior medical evaluation

The capacity assessor must confirm that a medical evaluation by a physician was conducted within the 3 months prior to the capacity assessment and that the results did not indicate that the adult was suffering from a reversible temporary medical condition that appeared likely to have a significant impact on the adult's decision-making capacity. If the evaluation indicated that there was a temporary,

reversible condition (e.g., a urinary tract infection or drug interaction problem), the condition must be treated before the assessment begins.

11.5 Formal Interview

The capacity assessor must meet with the adult and use a **cognitive and functional inquiry method** (see Capacity Assessment Worksheets) to assess the decision-making areas (Areas of Concern) that were previously identified as warranting assessment. It is important to remember that incapacity in one Area of Concern does **not** necessarily mean incapacity in other Areas of Concern. However, while conducting the formal interview, the assessor may determine that other Areas of Concern that were not previously identified also need to be assessed.

The assessor must also ask the adult about any recent, significant changes in his/her values and beliefs related to the identified decision-making areas. This will help the assessor understand whether the adult can appreciate the consequences of making a decision and the adult's justification for their decision or choice.

An individual's ability to articulate the reasoning behind their choice should reflect both relevance and internal consistency with the individual's beliefs and values. An individual's preferences and values may change over time, reflecting personal growth and life experiences.

For each of the decision-making areas or Areas of Concern being assessed, the capacity assessor must form an opinion about whether the adult is able: **a)** to understand the information relevant to a decision and **b)** to appreciate the reasonably foreseeable consequences of making or not making a decision.

In forming his or her opinion, the assessor must take into account the adult's ability to retain information and any other factors that the capacity assessor considers appropriate. The emphasis is on the quality of the decision-making process, not the actual course of action in which the adult engages.

For each Area of Concern that was assessed, the capacity assessor must give their opinion about whether the adult's capacity is significantly impaired (for a co-decision-making application) or lacking (for a guardianship or trusteeship application).

The capacity assessor must also form an opinion about whether the adult would be seriously harmed if he or she were served with an application for a guardianship or trusteeship order.

If the capacity assessor determines that the adult lacks the capacity to make personal or financial decisions or that the adult's personal decision-making

capacity is significantly impaired, the assessor must form an opinion about whether the adult is likely to regain capacity and if so, must recommend that there be a further capacity assessment and the period within which that should occur.

11.6 Functional Inquiry

Functional assessments, done in the past by family members or health care providers, were completed as part of guardianship applications under the *Dependent Adults Act*. These assessments no longer need to be completed. However, in a capacity assessment under the AGTA, the capacity assessor is determining the adult's ability to understand and appreciate the decisions that he or she is making with respect to each of the functional activities that fall within the decision-making Areas of Concern being assessed.

The areas that are assessed will depend upon the identified causes for concern and the type of court application. In assessing functionality, the assessor should be looking particularly at areas where there is a potential risk to the adult or others and where there is no one who can help the adult, thereby reducing the risk.

The personal and financial matters (Areas of Concern) and the functions within those matters are listed in the **Capacity Assessment Worksheets**. Information about the adult's current and prior level of functioning in the various Areas of Concern may be gathered from:

- the adult
- family members/caregivers
- team members in a facility
- direct observation
- standardized testing

11.7 Cognitive Inquiry

Cognition is the ability to process, store, retrieve and manipulate information. The basic cognitive functions are attention, orientation and memory. The higher cognitive functions are manipulation of knowledge, social awareness, reasoning, and problem-solving skills.

A cognitive assessment is not necessarily equivalent to an adult's functional abilities and is only part of the capacity assessment. Although there is no cognitive test that will definitively determine capacity, there are many different types of tests that may be used by health professionals, depending upon their professional training.

For each of the Areas of Concerns identified as needing to be assessed, the capacity assessor will assess cognitive functions such as attention, orientation and memory to help determine the adult's ability to understand and appreciate the consequences of making decisions in those Areas of Concerns.

11.8 Components of a Capable Decision

A capable decision is one where:

- the adult is aware of the choices that are available and understands the information provided about the choices;
- the adult understands the reasonably foreseeable effects or consequences of each choice and of making or not making a decision;
- the adult makes a choice after weighing the relative benefits and disadvantages of the choices available.

Examiner: _____ Date: _____

CAPACITY ASSESSMENT FOR CO-DECISION-MAKING APPOINTMENTS

I assessed the adult's capacity to make decisions **ONLY** in those areas in which a valid reason for assessment was identified. For each identified area, I assessed whether _____ (name of adult):

- is able to understand the information needed to make a decision about the matter(s) specified and is able to understand the options presented or whether those abilities are significantly impaired;
- is able to retain information relevant to making a decision about the matter(s) specified below or whether that ability is significantly impaired; and
- is able to identify and appreciate the consequences of making or not making a decision about the matter(s) specified below or whether that ability is significantly impaired;

AND

- whether the adult would have the capacity to make decisions about the matter(s) specified if the adult were provided with appropriate guidance and support.

For each personal matter, I assessed whether the adult was capable of making a decision in the area specified or whether their decision-making ability was significantly impaired (see the Table on the next page).

CAPACITY ASSESSMENT FOR GUARDIANSHIP AND TRUSTEESHIP APPOINTMENTS

I assessed the adult's capacity to make decisions **ONLY** in those areas in which a valid reason for assessment was identified. For each identified area, I assessed whether _____ (name of adult):

- is able to understand the information needed to make a decision about the matter(s) specified and is able to understand the options presented;
- is able to retain information relevant to making a decision about the matter(s) specified below; and
- is able to identify and appreciate the consequences of making or not making a decision about the matter(s) specified below:

For each personal matter, I assessed whether the adult was capable or incapable of making a decision in that area (see the Table below).

Domain	
Health care	Response to Query
Medical conditions: <ul style="list-style-type: none"> ▪ Able to identify medical condition(s) and treatment(s) ▪ Makes and keeps medical appointments ▪ Participates in own care and treatment ▪ Requests assistance, as needed ▪ Recognizes emergencies and uses EMR Medication Regime: <ul style="list-style-type: none"> ▪ Aware of current medications and reasons for taking them ▪ Aware of potential side effects ▪ Takes medications as prescribed Consent to Treatment <ul style="list-style-type: none"> ▪ Aware of medical problem(s) ▪ Aware of proposed treatment and alternatives ▪ Aware of consequences of accepting or refusing treatment, when explained 	
	Reasons for Opinion about Adult's Capacity
Accommodation	Response to Query
Suitability of Residence: <ul style="list-style-type: none"> ▪ Describes current living situation & willing to accept help, if required ▪ Identifies current needs and assistance / services required ▪ Recognizes level of independence and able to organize assistance in areas such as Personal care, Basic Home Maintenance, Meal preparation, Mobility ▪ Aware of other suitable residential alternatives ▪ Can access transportation 	

Safety: evaluate risk and independence <ul style="list-style-type: none"> ▪ Recognizes potential fire hazards ▪ Functions outside familiar environment ▪ Aware of environmental risks (icy conditions, traffic) ▪ Wandering 	Reasons for Opinion about Adult's Capacity
Choice of Associates <ul style="list-style-type: none"> ▪ Recognizes when others present a danger and takes precautions ▪ Able to choose companions who do not abuse or exploit the patient ▪ Recognizes frequently seen associates ▪ congruence with values and ability to express preferences 	Response to Query
Sexuality / Intimacy: <ul style="list-style-type: none"> ▪ Consent ▪ Knowledge of relational concepts ▪ Social norms 	Reasons for Opinion about Adult's Capacity
Participation in social/leisure activities <ul style="list-style-type: none"> ▪ Able to choose social activities to suit interests ▪ Level of independence ▪ Engagement ▪ Ability to identify preferences 	Response to Query
	Reasons for Opinion about Adult's Capacity

Legal matters (personal)	Response to Query
General: <ul style="list-style-type: none"> ▪ Aware of legal rights ▪ Able to access counsel (formal and informal) ▪ Understands the implications of signing a legal document ▪ Understands reasons for legal proceedings (e.g. reason for charge, reason for suit, etc.) ▪ Permits / licences are relevant ▪ Able to apply for licences / permits 	
	Reasons for Opinion about Adult's Capacity
Participation in employment activities	Response to Query
<ul style="list-style-type: none"> ▪ Makes decisions re: type of work ▪ Able to find and maintain employment suitable to abilities ▪ Ability to identify preferences ▪ Awareness of skill level (strengths & weaknesses) ▪ Able to recognize and avoid workplace hazards ▪ Able to understand wages and benefits ▪ Aware of work alternatives and consequences of not working 	
	Reasons for Opinion about Adult's Capacity
Participation in educational, vocational or other training	Response to Query
<ul style="list-style-type: none"> ▪ Education, vocation and / or training is relevant ▪ Ability to identify preferences ▪ Awareness of skill level (strengths & weaknesses) ▪ Awareness of options & able to choose a training program 	
	Reasons for Opinion about Adult's Capacity

<ul style="list-style-type: none"> ▪ Initiates or terminates program independently 	
Financial	Response to Query
<p>Income/ Assets:</p> <ul style="list-style-type: none"> ▪ Source(s) and amounts ▪ Bank information and signing authority on accounts ▪ Monitors account activity ▪ Knowledge of types and value of assets ▪ Manages investments ▪ Plans to acquire or dispose of asset(s) <p>Expenses / Debts:</p> <ul style="list-style-type: none"> ▪ Types and amounts ▪ Method(s) of bill payment ▪ Gifts and donations ▪ Arranges for tax payments, does income tax return ▪ Debts <p>Financial Management:</p> <ul style="list-style-type: none"> ▪ Maintains budget / accesses money ▪ Handles currency / issues cheques ▪ Able to ask for assistance ▪ Safeguards financial documents and information ▪ Manages business <p>Risks of Exploitation:</p> <ul style="list-style-type: none"> ▪ Purchases from solicitors ▪ Recognizes abuse by caregivers ▪ Employs protective strategies <p>Other non-personal/financial legal matters</p> <ul style="list-style-type: none"> ▪ awareness of legal rights ▪ understanding the implications of 	
	Reasons for Opinion about Adult's Capacity

<div>signing legal documents</div> <div><div>▪ understanding reasons for legal proceedings</div><div>▪ ability to access counsel</div></div>	
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11.11 Court-ordered Capacity Assessment

Under section 104 of the Act, if an adult's capacity to make decisions is in issue in a proceeding under the Act, the Court may order a capacity assessment of the adult. The order may direct the adult to undergo the capacity assessment, and to either permit a capacity assessor to enter the adult's place of residence for the purpose of conducting the assessment, or require the adult to attend at another place for the purpose of undergoing the assessment.

If an adult refuses to undergo a capacity assessment as directed by the Court or is prevented from undergoing a capacity assessment, the capacity assessor should not persist in trying to assess the adult but report the results of the visit to the applicant. The applicant, if they choose, can then make an application to Court to determine any evidence that the Court considers relevant to the adult's capacity and may, if the Court considers that the available evidence is sufficient for it to do so, make a determination with respect to the adult's capacity.

Section 87 of the Regulation sets out the procedure for applying for an order directing a capacity assessment. A notice of application and hearing in Form 39 and an affidavit must be filed. The affidavit must set out the reasons why the applicant believes it would be in the best interests of the adult for the Court to make the order including the reasons why the applicant believes that the adult may lack capacity, and whether the adult is at risk of suffering serious harm or financial loss if the order is not made. The applicant must serve the application documents on the adult who is the subject of the application and any other person as directed or approved by the Court or outlined in the legislation.

11.12 Access to personal information

Under section 103 of the Act, a capacity assessor may access personal information about the adult for the purposes of conducting the assessment (except financial information). This information may be accessed, collected or obtained from a public body (under the *Freedom of Information and Protection of Privacy Act*), a custodian (under the *Health Information Act*) or an organization (under the *Personal Information Protection Act*). Personal information about the adult's health care or living situation may be needed since the assessor will be conducting a cognitive as well as a functional inquiry as part of the assessment process and needs to be familiar with the areas of the adult's life where decision-making may be required. The capacity assessor may only use and disclose personal information acquired under this section for the purpose of the assessment and must keep it secure.

If the capacity assessor believes that access to financial information about the adult is needed for the purposes of the capacity assessment (e.g., for a trusteeship application), the applicant may apply to the Court (under section 86 of

the Regulation) for an order directing the public body, custodian or organization to provide financial information about the adult to the capacity assessor.

12. Capacity Test and Approach for Different Types of Court Applications

12.1 Co-Decision-making Order

12.11 Description

- The court may appoint a co-decision-maker when the adult's personal decision-making ability is "significantly impaired" (see Definitions) but the adult would still have the capacity to make decisions about personal matters if provided with appropriate guidance and support.
- The court must determine that less intrusive and less restrictive alternative measures have been considered or implemented and would not likely be or have not been effective to meet the needs of the adult.
- The court must also determine that it would be in the best interests of the adult to make the order.
- The adult and the proposed co-decision-maker must consent to the order and the adult must also consent to the person proposed as the co-decision-maker.
- Decision-making is shared. The appointed co-decision-maker cannot make decisions unilaterally.
- The court order may be subject to review after a specified period or at any time by an interested person.

12.12 Capacity Test

- The assessment done in this case is to determine whether the adult's ability to understand the information relevant to making a decision is significantly impaired (after assessing the adult's factual knowledge base and his/her understanding of options) and whether the adult's ability to understand the reasonably foreseeable consequences of making or not making a decision is significantly impaired (after assessing the adult's ability to appraise the potential outcomes and justify their choices).
- The assessor must also determine whether the adult could make decisions about personal matters with appropriate guidance and support.
- Assessors need to consider if the adult can regain capacity and make a recommendation when the adult's capacity should be reassessed.

12.13 Approach

- Inform the adult regarding rights, purpose for and consequences of assessment; obtain consent to conduct assessment; ensure medical evaluation has ruled out temporary, reversible medical conditions that may affect decision-making capacity.
- In addition to a cognitive and functional inquiry regarding the adult's ability to understand information relevant to the decision(s) that need(s) to be made in the identified Areas of Concerns and to understand the reasonably foreseeable consequences of making or not making the decision(s), the capacity assessor must use in-depth questioning targeted at the adult's ability to share personal decision-making.
- The adult needs to be able to consent to choice of decision-maker and to the co-decision-making order.
- The legal status of the adult will change – decisions must be made jointly by both the assisted adult and the co-decision-maker.

12.14 Examples

- An example of a situation where co-decision-making may be helpful would be an elderly adult in the early stages of Alzheimer's Disease who needs a trusted friend or relative to guide her in making reasonable judgments about health care or accommodation decisions but who is not in need of a guardianship order at this time.

12.2 Guardianship Order

12.21 Description

- The court may appoint a guardian when an adult lacks the capacity to make decisions about (a) personal matter(s).
- The court must determine that less intrusive and less restrictive alternative measures have been considered or implemented and would not likely be or have not been effective to meet the needs of the adult.
- The court must also determine that it is in the best interests of the adult to make the order.
- The court order may be subject to review after a specified period or at any time by an interested person.

12.22 Capacity Test

- The assessment done in this case is to determine whether the adult lacks the ability to understand information relevant to making personal decisions (i.e. assessing the adult's factual knowledge base and his/her

understanding of options) and lacks the ability to appreciate the reasonable foreseeable consequences of making or not making personal decisions (i.e., the adult's ability to assess the potential outcomes and justify their choices).

- The assessment involves a functional inquiry targeted to each personal Area of Concern in which the need for assessment has been identified.
- Assessors need to consider if the adult can regain capacity and make a recommendation when the adult's capacity should be reassessed.

12.23 Approach

- Inform the adult regarding rights, purpose for and consequences of assessment; obtain consent to conduct assessment; ensure medical evaluation has ruled out reversible, temporary medical conditions that may affect decision-making capacity.
- Emphasis is more on considering what is in the adult's best interests.
- Assessment is targeted at those Areas of Concerns of personal decision-making capacity identified as being in question.
- Must consider whether there is a need to change the adult's legal status for decision-making on a permanent basis.
- The adult's legal status will change - personal decisions (in the matters specified in the order) must be made by court-appointed guardian.

12.24 Examples

- An example of a situation where a guardianship order would be helpful would be a developmentally disabled child who is not capable of making any personal decisions and who will be turning 18 in 6 months and needs a substitute decision-maker appointed. Another example would be an elderly adult with severe dementia who needs to be placed in a locked long-term care facility and needs someone to make decisions about his health care and accommodation. The adult has no personal directive.

12.3 Trusteeship Order

12.31 Description

- The court may appoint a trustee when an adult does not have the capacity to make decisions respecting any or all financial matters.
- The court must determine that less intrusive and less restrictive measures would not adequately protect the adult's interests in respect of financial matters.

- The court must also determine that it is in the best interests of the adult to make the order.
- The court order may be subject to review after a specified period or at any time by an interested person.

12.32 Capacity Test

- The assessment done in this case is to determine whether the adult lacks the ability to understand information relevant to making financial decisions (i.e. assessing the adult's factual knowledge base and his/her understanding of options) and lacks the ability to appreciate the reasonably foreseeable consequences of making or not making financial decisions (i.e., the adult's ability to assess the potential outcomes and justify their choices).
- The assessment involves a cognitive and functional inquiry targeted to each property and/or financial area in which the need for assessment has been identified.
- Assessors need to consider if the adult can regain capacity and make a recommendation when the adult's capacity should be reassessed.

12.33 Approach

- Inform the adult regarding rights, purpose for and consequences of assessment; obtain consent to conduct assessment; ensure medical evaluation has ruled out temporary, reversible medical conditions that may affect decision-making capacity.
- Emphasis is more on considering what is in the adult's best interests.
- Assessment is targeted at those Areas of Concerns of financial decision-making capacity identified as being in question.
- Must consider whether there is a need to change the adult's decision-making ability on a permanent basis.
- Permanent legal status of the adult will change - financial decisions are made by court-appointed trustee (decision-making authority specified in order).

12.34 Examples

- An example of a situation where a trusteeship order would be helpful would be a developmentally disabled child who is not capable of making any financial decisions and who will be turning 18 in 6 months and needs a substitute decision-maker appointed. Another example would be an elderly adult with severe dementia who has a large and complex estate and needs someone to make decisions about his investments and other

financial and property matters. The adult does not have an enduring power of attorney.

13. Who receives a copy of the assessment?

Once a capacity assessment has been completed, the following individuals receive a copy of the Capacity Assessment Report: the adult, the applicant, the Courts, and the review officer as part of the application package.

14. Are capacity assessors liable if they make the wrong decision about capacity?

No action lies against a capacity assessor or any person acting under the authority of the capacity assessor for anything done or omitted to be done in good faith in exercising his or her powers or authority or carrying out his or her duties, responsibilities or functions under the AGTA.

15. Can a capacity assessor charge a fee for conducting a capacity assessment?

A capacity assessor may charge a fee for a capacity assessment including the capacity assessment report up to a maximum of:

- \$500, if the capacity assessment relates exclusively to the adult's capacity to make decisions about either a personal matters **or** financial matters (including a section 96 capacity assessment);
- OR**
- \$700, if the capacity assessment relates to the adult's capacity to make decisions about both personal matters **and** financial matters.

The Court may allow a higher fee for a capacity assessment on the basis of the complexity of the capacity assessment.

16. Payment of fees by Crown

Anybody who is applying for a co-decision-making, guardianship or trusteeship order or for a review of an order may request the Crown to pay for the capacity assessment by submitting a request to the Public Guardian. Once the Public Guardian receives this request, a review of the financial situation of the person making the request and the adult in question will be done to determine whether it would be a financial hardship for the person making the request or the adult to pay the fees. If it is determined that it would be a financial hardship for the person making the request or the adult, the Public Guardian may recommend that the

Crown pay the fees for the capacity assessment of the adult. The Crown may pay the fees for only one capacity assessment of an adult in a calendar year.

17. What happens if an Assisted or Represented Adult regains capacity?

If a represented or assisted adult or any interested person feels that the adult may have regained capacity, they may apply to court to have the co-decision-making, guardianship or trusteeship order reviewed. When granting an order, the court must specify a date by which the order must be reviewed if the capacity assessment indicates that the adult's capacity is likely to improve. In other cases, the court has discretion whether to specify a review date or not. An interested person may seek court review of an order at any time. A new capacity assessment would be required as part of the evidence the court considers in a review application.

18. Definitions

- **Represented Adult** – the adult who is the subject of a guardianship or trusteeship order
- **Assisted Adult** – the adult who is the subject of a co-decision-making order
- **Co-Decision-making Order** – an Order that a significantly impaired adult consents to, where a co-decision maker and the adult make the decisions together.
- **Capacity** – section 1(d) of the Act - means, in respect of the making of a decision about a matter, the ability to understand the information that is relevant to the decision and to appreciate the reasonably foreseeable consequences of
 - (i) a decision, and
 - (ii) a failure to make a decision;

Note: the definition of “capacity” under the **AGTA** is the same as the definition of “capacity” under the **Personal Directives Act**.

- **Capacity assessment** – section 1(e) of the **Act** - means an assessment conducted under Part 4 of an adult's capacity to make decisions respecting personal matters or financial matters.

Note: this definition is referring to capacity assessments conducted for the purpose of co-decision-making, guardianship and trusteeship applications not to assessments done by health care providers for the purpose of specific decision-making under Part 3, Division 1 of the **Act**.

- **Capacity assessment report** – section 1(f) of the **Act** - means a report completed under section 102 of the **Act**. The Ministerial Regulation prescribes the forms for the capacity assessment reports. Form 3 is used for capacity assessments conducted for co-decision-making applications. Form 4 is used for capacity assessments conducted for guardianship and trusteeship applications. Form 10 is used for capacity assessments under section 96 of the **Act** when the assessment done by a health care provider for specific decision-making is disputed.
- **Capacity assessor** – section 1(g) of the **Act** - means a member of a health profession designated in the regulations as being qualified to conduct capacity assessments who is designated as a capacity assessor under the regulations.
- **Significantly impaired** – section 2(d) of the Cabinet Regulation - in respect of an adult's capacity to make decisions, means that the adult's cognitive and adaptive abilities
 - (i) are substantially limited as the result of an impairment, including, without limitation, a developmental disability, an organic, degenerative or neurological disease or disorder, an acquired brain injury or a chronic mental illness, and
 - (ii) are not so substantially limited that the adult would not have the capacity to make decisions with appropriate guidance and support.

Note: this definition is used for assessments of capacity conducted for co-decision-making applications.

19. Where can I get more information?

Call the Office of the Public Guardian's toll-free information line:

1-877-427-4525

Monday to Friday

8:15 a.m. - 4:30 p.m.

www.seniors.alberta.ca/opg/guardianship

19.1 Offices

The regional offices of the Office of the Public Guardian are open Monday to Friday from 8:15 a.m. to 4:30 p.m. To be connected toll-free, call 310-0000.

Northwest Region

Grande Prairie 780-833-4319

Edmonton Region

Edmonton 780-427-0017

Central Region

Red Deer 403-340-5165

Northeast Region

St. Paul 780-645-6278

Calgary Region

Calgary 403-297-3364

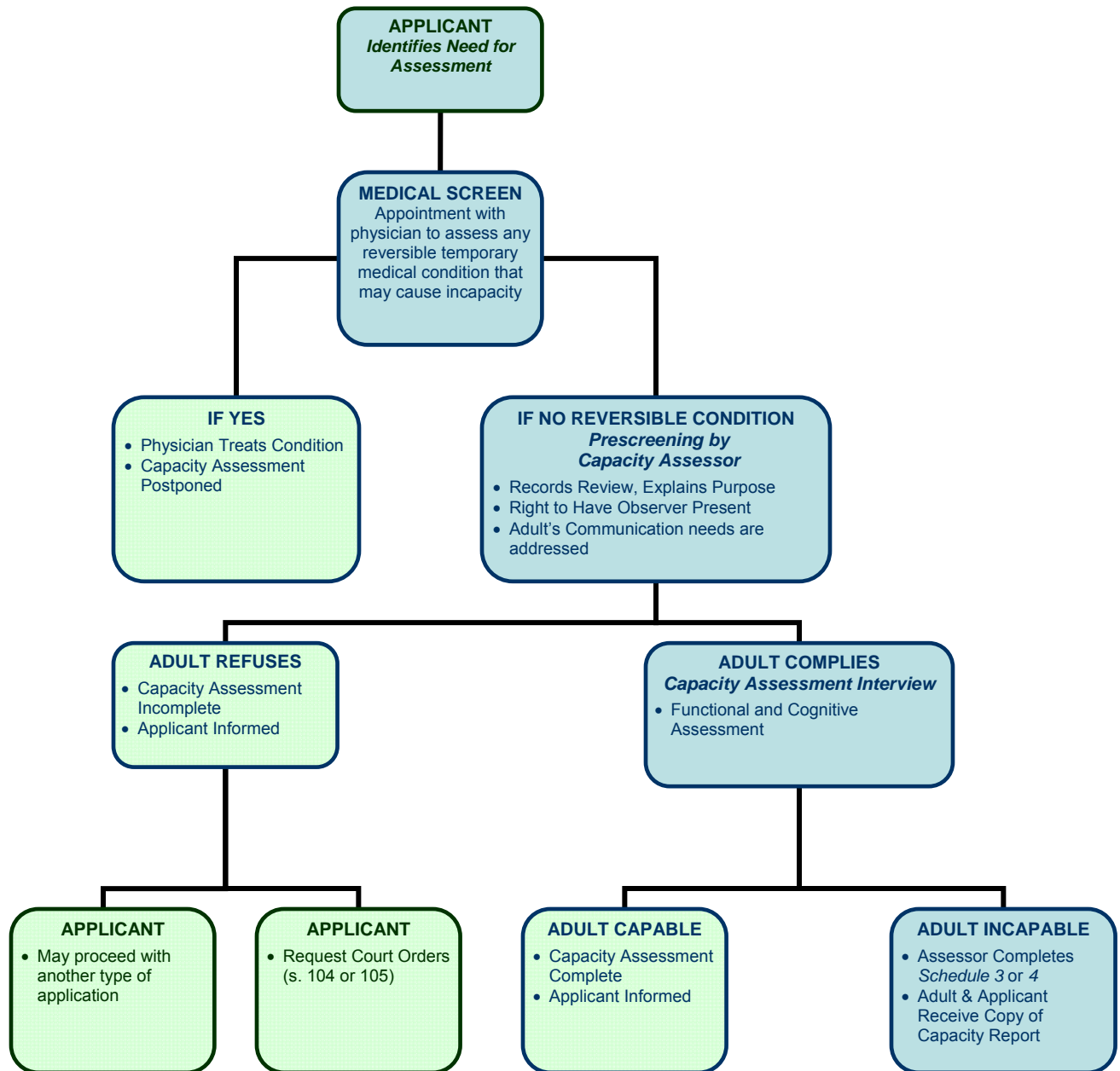
South Region

Lethbridge 403-381-5648

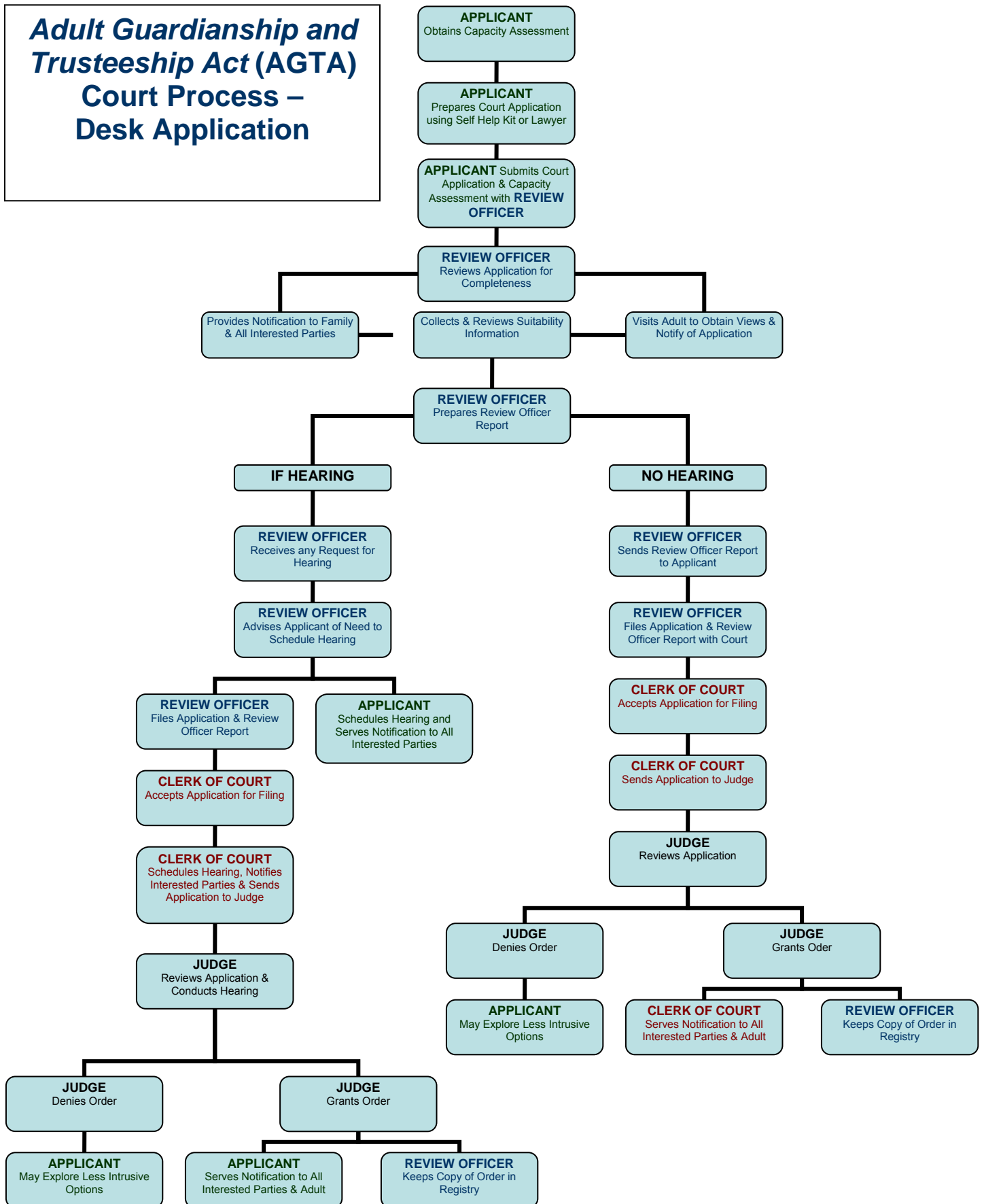
Medicine Hat 403-528-5245

20. Attachment A

Capacity Assessment under the AGTA (Co-Decision-making Guardianship and Trusteeship Applicant)



Adult Guardianship and Trusteeship Act (AGTA) Court Process – Desk Application



21. Attachment B

Capacity Assessment Forms

Form 3

Capacity Assessment Report (Co-decision-making)

(This form of capacity assessment report is to be used in respect of an application for a co-decision-making order.)

“capacity” means, in respect of the making of a decision about a matter, the ability to understand the information that is relevant to the decision and to appreciate the reasonably foreseeable consequences of

- (a) a decision, and
- (b) a failure to make a decision;

“significantly impaired”, in respect of an adult’s capacity to make decisions, means that the adult’s cognitive and adaptive abilities

- (a) are substantially limited as the result of an impairment, including, without limitation, a developmental disability, an organic, degenerative or neurological disease or disorder, an acquired brain injury or a chronic mental illness, but
- (b) are not so substantially limited that the adult would not have the capacity to make decisions with appropriate guidance and support.

1. I, (name of the capacity assessor), am a registered member of the (name of the capacity assessor’s professional college).

If the capacity assessor is not a physician or registered psychologist, the capacity assessor must complete the following:

☐ I am currently designated as a capacity assessor under the **Act**. My designation is dated (day/month/year).

2. The reason(s) or circumstances leading up to the request for this capacity assessment are:

3. I have obtained confirmation that a medical evaluation of the adult was conducted by (name of physician) on (day/month/year) (must be within the 3-month period immediately preceding the capacity assessment) and that the results of the medical evaluation did not indicate that the adult was suffering from a reversible temporary medical condition that appeared likely to have a significant impact on his or her capacity to make a decision about a personal matter.

Comments:

4. Prior to conducting an assessment of the capacity of (name of the adult) (“the adult”) I met with the adult and I explained to him or her

- (a) the purpose and nature of the capacity assessment,
- (b) that he or she has the right to refuse

- (i) to undergo the capacity assessment, or
- (ii) to continue with the capacity assessment at any point during the capacity assessment,
- (c) that he or she has the right to have
 - (i) a person present to assist him or her in feeling comfortable and relaxed when undergoing the capacity assessment, and
 - (ii) the assistance of a person or the use of a device to communicate in order to be able to fully demonstrate his or her capacity during the capacity assessment,
- (d) that if, in my opinion, a person who is present to assist the adult during the capacity assessment is interfering with the capacity assessment, the person may be asked to leave, and
- (e) the significance and effect of a finding that his or her capacity to make decisions respecting a personal matter is significantly impaired.

Comments:

5. The adult

- ☐ (a) has not refused to undergo or to continue with the capacity assessment, and
 - ☐ (i) in my opinion, the adult
 - (A) understands the purpose of the capacity assessment and that he or she has a right to refuse to undergo or continue with the capacity assessment,
 - (B) appears to be capable of consenting to the capacity assessment, and
 - (C) has consented to the capacity assessment,
 - or
 - ☐ (ii) in my opinion
 - (A) the adult appears not to be capable of consenting to the capacity assessment, and
 - (B) it is in the best interests of the adult to conduct the capacity assessment;
 - or
- ☐ (b) has refused to undergo or to continue with the capacity assessment.

If (b) is checked,

- ☐ (i) a capacity assessment was not conducted, or
- ☐ (ii) the capacity assessment was discontinued.

Comments:

6. I have determined that

- ☐ (a) it is not necessary for the adult to have and the adult has not requested to have

- (i) a person present to assist the adult in feeling comfortable and relaxed when undergoing the capacity assessment, or
 - (ii) the assistance of a person or the use of a device to communicate in order for the adult to be able to fully demonstrate his or her capacity during the capacity assessment,
- or
- ☐ (b) it is necessary for the adult to have or the adult has requested to have
 - (i) a person present to assist the adult in feeling comfortable and relaxed when undergoing the capacity assessment, or
 - (ii) the assistance of a person or the use of a device to communicate in order for the adult to be able to fully demonstrate his or her capacity during the capacity assessment.

If (b) is checked, set out what is considered necessary or what the adult has requested, as the case may be, as well as the steps taken to have a person present or to provide the adult with the assistance of a person or device.

Comments:

7. Based on the information that was provided to me, I have determined that an assessment of the capacity of the adult to make decisions is warranted with respect to the following personal matter(s):

- ☐ (a) the adult's health care;
- ☐ (b) where, with whom and under what conditions the adult is to live, either permanently or temporarily;
- ☐ (c) with whom the adult may associate;
- ☐ (d) the adult's participation in social activities;
- ☐ (e) the adult's participation in any educational, vocational or other training;
- ☐ (f) the adult's employment;
- ☐ (g) the carrying on of any legal proceeding that does not relate primarily to the financial matters of the adult;

Comments:

8. I asked the adult if there have been any significant changes recently in his or her beliefs and values related to making decisions about the personal matter(s) identified in item 7 and the adult informed me that

- ☐ (a) there have been significant changes recently in his or her beliefs and values related to making decisions about the matter(s), or
- ☐ (b) there have not been significant changes recently in his or her beliefs and values related to making decisions about the matter(s).

Comments:

9. I assessed the capacity of the adult to make decisions about each personal matter identified in item 7 and my opinion respecting his or her capacity to make decisions about the personal matter(s) is indicated in column 1 or 2 below, as the case may be:

Adult has capacity	Capacity of adult is significantly impaired	Personal Matter
<input type="checkbox"/>	<input type="checkbox"/>	the adult's health care
<input type="checkbox"/>	<input type="checkbox"/>	where, with whom and under what conditions the adult is to live, either permanently or temporarily
<input type="checkbox"/>	<input type="checkbox"/>	with whom the adult may associate
<input type="checkbox"/>	<input type="checkbox"/>	the adult's participation in social activities
<input type="checkbox"/>	<input type="checkbox"/>	the adult's participation in any educational, vocational or other training
<input type="checkbox"/>	<input type="checkbox"/>	the adult's employment
<input type="checkbox"/>	<input type="checkbox"/>	the carrying on of any legal proceeding that does not relate primarily to the financial matters of the adult
<input type="checkbox"/>	<input type="checkbox"/>	other <u>(specify)</u>

(Note: Cross out any matter in column 3 that is not identified in item 7.)

The reasons for my opinion are as follows:

(set out the reasons)

In forming my opinion about the adult's capacity to make decisions about the personal matter(s),

- (a) I considered the adult's ability to understand the information that is relevant to a decision and to appreciate the reasonably foreseeable consequences of a decision and a failure to make a decision about the personal matter(s), and
- (b) I took into account
 - (i) whether the adult has the ability to retain information that is relevant to decisions about the personal matter(s), and
 - (ii) the following additional factors, if any: (specify).

Comments:

10. In my opinion the adult has the capacity to consent to

- (a) the appointment of any individual who is proposed to be appointed as a co-decision-maker, and
- (b) a co-decision-making order.

11. If in item 9 I have stated that in my opinion the capacity of the adult to make decisions about one or more personal matters is significantly impaired, I have considered whether the adult is likely to regain some or all of his or her capacity to make decisions about the matter(s) and I believe that the adult

- ☐ (a) is likely to regain some or all of his or her capacity to make decisions about the matter(s), or

(set out the reasons)

- ☐ (b) is not likely to regain some or all of his or her capacity to make decisions about the matter(s).

(set out the reasons)

If (a) is checked, complete the following:

If the Court appoints a co-decision-maker for the adult, I recommend that another capacity assessment of the adult be conducted no later than (day) of (month) , (year) .

12. I have attached more detailed information respecting the capacity assessment. (Optional) ☐ Yes ☐ No

Dated at (location) in the Province of Alberta this (day) of (month) , (year) .

(signature of capacity assessor)

Form 4

Capacity Assessment Report (Guardianship or Trusteeship or both)

(This form of capacity assessment report is to be used in respect of an application for a guardianship order or trusteeship order or both.)

“capacity” means, in respect of the making of a decision about a matter, the ability to understand the information that is relevant to the decision and to appreciate the reasonably foreseeable consequences of

- (a) a decision, and
- (b) a failure to make a decision.

1. I, (name of the capacity assessor) , am a registered member of the (name of the capacity assessor’s professional college) .

If the capacity assessor is not a physician or registered psychologist, the capacity assessor must complete the following:

- ☐ I am currently designated as a capacity assessor under the Act. My designation is dated (day/month/year) .

2. The reason(s) or circumstances leading up to the request for this capacity assessment are:

3. I have obtained confirmation that a medical evaluation of the adult was conducted by (name of physician) on (day/month/ year) (must be within the 3-month period immediately preceding the capacity assessment) and that the results of the medical evaluation did not indicate that the adult was suffering from a reversible temporary medical condition that appeared likely to have a significant impact on his or her capacity to make a decision about a personal matter or financial matters.

Comments:

4. Prior to conducting an assessment of the capacity of (name of the adult) (“the adult”) I met with the adult and, unless the level of consciousness of the adult was such that the adult was non-responsive, I explained to him or her

- (a) the purpose and nature of the capacity assessment,
- (b) that he or she has the right to refuse
 - (i) to undergo the capacity assessment, or
 - (ii) to continue with the capacity assessment at any point during the capacity assessment,
- (c) that he or she has the right to have
 - (i) a person present to assist him or her in feeling comfortable and relaxed when undergoing the capacity assessment, and
 - (ii) the assistance of a person or the use of a device to communicate in order to be able to fully demonstrate his or her capacity during the capacity assessment,
- (d) that if, in my opinion, a person who is present to assist the adult during the capacity assessment is interfering with the capacity assessment, the person may be asked to leave, and
- (e) the significance and effect of a finding that he or she does not have the capacity to make decisions respecting a personal matter or a financial matter.

Comments:

(NOTE: Provide any comments you may have. If the level of consciousness of the adult was such that the adult was non-responsive you must indicate that here.)

5. The adult

- ☐ (a) has not refused to undergo or to continue with the capacity assessment, and
 - ☐ (i) in my opinion, the adult
 - (A) understands the purpose of the capacity assessment and that he or she has a right to refuse to undergo or to continue with the capacity assessment,
 - (B) appears to be capable of consenting to the capacity assessment, and
 - (C) has consented to the capacity assessment,
 - or
 - ☐ (ii) in my opinion

- (A) the adult appears not to be capable of consenting to the capacity assessment, and
- (B) it is in the best interests of the adult to conduct the capacity assessment;

or

- ☐ (b) has refused to undergo or to continue with the capacity assessment.

If (b) is checked,

- ☐ (i) a capacity assessment was not conducted, or
- ☐ (ii) the capacity assessment was discontinued.

Comments:

6. I have determined that

- ☐ (a) it is not necessary for the adult to have and the adult has not requested to have
 - (i) a person present to assist the adult in feeling comfortable and relaxed when undergoing the capacity assessment, or
 - (ii) the assistance of a person or the use of a device to communicate in order for the adult to be able to fully demonstrate his or her capacity during the capacity assessment,

or

- ☐ (b) it is necessary for the adult to have or the adult has requested to have
 - (i) a person present to assist the adult in feeling comfortable and relaxed when undergoing the capacity assessment, or
 - (ii) the assistance of a person or the use of a device to communicate in order for the adult to be able to fully demonstrate his or her capacity during the capacity assessment.

If (b) is checked, set out what is considered necessary or what the adult has requested, as the case may be, as well as the steps taken to have a person present or to provide the adult with the assistance of a person or device.

Comments:

7. Based on the information that was provided to me, I have determined that an assessment of the capacity of the adult to make decisions is warranted

- ☐ (a) with respect to the following personal matter(s):
 - ☐ (i) the adult's health care;
 - ☐ (ii) where, with whom and under what conditions the adult is to live, either permanently or temporarily;
 - ☐ (iii) with whom the adult may associate;
 - ☐ (iv) the adult's participation in social activities;
 - ☐ (v) the adult's participation in any educational, vocational or other training;

- ☐ (vi) the adult's employment;
- ☐ (vii) the carrying on of any legal proceeding that does not relate primarily to the financial matters of the adult;

Comments:

- ☐ (b) with respect to financial matters.

Comments:

8. Unless the level of consciousness of the adult was such that the adult was non-responsive, I asked the adult if there have been any significant changes recently in his or her beliefs and values related to making decisions about the matter(s) identified in item 7 and the adult informed me that

- ☐ (a) there have been significant changes recently in his or her beliefs and values related to making decisions about the matter(s), or
- ☐ (b) there have not been significant changes recently in his or her beliefs and values related to making decisions about the matter(s).

Comments:

(NOTE: Provide any comments you may have. If the level of consciousness of the adult was such that the adult was non-responsive, you must indicate that here.)

9. The level of consciousness of the adult at the time of the capacity assessment was

- ☐ (a) alert,
- ☐ (b) fluctuating, or
- ☐ (c) non-responsive.

Comments:

10. I assessed the capacity of the adult to make decisions about the matter(s) identified in item 7 and my opinion respecting his or her capacity to make decisions about the matter(s) is indicated in column 1 or 2, as the case may be:

Adult has capacity	Adult does not have capacity	Matter
		(a) personal matter(s)
<input type="checkbox"/>	<input type="checkbox"/>	(i) the adult's health care
<input type="checkbox"/>	<input type="checkbox"/>	(ii) where, with whom and under what conditions the adult is to live, either permanently or temporarily
<input type="checkbox"/>	<input type="checkbox"/>	(iii) with whom the adult may associate

- | | | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | (iv) the adult's participation in social activities |
| <input type="checkbox"/> | <input type="checkbox"/> | (v) the adult's participation in any educational, vocational or other training |
| <input type="checkbox"/> | <input type="checkbox"/> | (vi) the adult's employment |
| <input type="checkbox"/> | <input type="checkbox"/> | (vii) the carrying on of any legal proceeding that does not relate primarily to the financial matters of the adult |
| <input type="checkbox"/> | <input type="checkbox"/> | (viii) other <u>(specify)</u> |
| <input type="checkbox"/> | <input type="checkbox"/> | (b) financial matters |

(Note: Cross out any matter in column 3 that is not identified in item 7.)

The reasons for my opinion are as follows:

(set out the reasons)

In forming my opinion about the adult's capacity to make decisions about the matter(s),

- (a) I considered the adult's ability to understand the information that is relevant to a decision and to appreciate the reasonably foreseeable consequences of a decision and a failure to make a decision about the matter(s), and
- (b) I took into account
 - (i) whether the adult has the ability to retain information that is relevant to decisions about the matter(s), and
 - (ii) the following additional factors, if any: (specify).

Comments:

11. In my opinion, serving the adult with notice of an application for a guardianship or trusteeship order

- ☐ (a) is likely to cause serious emotional or physical harm to the adult, or
- ☐ (b) is not likely to cause serious emotional or physical harm to the adult.

(set out the reasons)

12. If in item 10 I have stated that in my opinion the adult does not have the capacity to make decisions about one or more matter(s), I have considered whether the adult is likely to regain some or all of his or her capacity to make decisions about the matter(s) and I believe that the adult

- ☐ (a) is likely to regain some or all of his or her capacity to make decisions about the matter(s);

(set out the reasons)

- ☐ (b) is not likely to regain some or all of his or her capacity to make decisions about the matter(s).

(set out the reasons)

If (a) is checked, complete the following:

If the court appoints a guardian or trustee for the adult, I recommend that another capacity assessment of the adult be conducted by no later than (day) of (month) , (year) .

13. I have attached more detailed information respecting the capacity assessment. (Optional) ☐ Yes
☐ No

Dated at (location) in the Province of Alberta this (day) of (month) , (year) .

(signature of capacity assessor)

Form 10

Capacity Assessment Report (Section 96 of the Act, Health Care or Temporary Admission to or Discharge from a Residential Facility)

(This form of capacity assessment report is to be used in respect of a capacity assessment under section 96 of the Act.)

“capacity” means, in respect of the making of a decision about a matter, the ability to understand the information that is relevant to the decision and to appreciate the reasonably foreseeable consequences of

- (a) a decision, and
- (b) a failure to make a decision.

1. I, (name of the capacity assessor) , am a registered member of the (name of the capacity assessor's professional college) .

If the capacity assessor is not a physician or registered psychologist, the capacity assessor must complete the following:

- ☐ I am currently designated as a capacity assessor under the Act. My designation is dated (day/month/year) .

2. The reason(s) or circumstances leading up to the request for this capacity assessment are:

3. I have obtained confirmation that a medical evaluation of the adult was conducted by (name of physician) on (day/month/year) (must be within the 3-month period immediately preceding the capacity assessment) and that the results of the medical evaluation did not indicate that the adult was suffering from a reversible temporary medical condition that appeared likely to have a significant impact on his or her capacity to make a decision about his or her health care or temporary admission to or discharge from a residential facility.

Comments:

4. Prior to conducting an assessment of the capacity of (name of the adult) (“the adult”) I met with the adult and I explained to him or her
- (a) the purpose and nature of the capacity assessment,
 - (b) that he or she has the right to refuse
 - (i) to undergo the capacity assessment, or
 - (ii) to continue with the capacity assessment at any point during the capacity assessment,
 - (c) that he or she has the right to have
 - (i) a person present to assist him or her in feeling comfortable and relaxed when undergoing the capacity assessment, and
 - (ii) the assistance of a person or the use of a device to communicate in order to be able to fully demonstrate his or her capacity during the capacity assessment,
 - (d) that if, in my opinion, a person who is present to assist the adult during the capacity assessment is interfering with the capacity assessment, the person may be asked to leave, and
 - (e) the significance and effect of a finding that he or she does not have the capacity to make a decision respecting a personal matter or a financial matter.

Comments:

5. The adult

- ☐ (a) has not refused to undergo or to continue with the capacity assessment, and
 - ☐ (i) in my opinion, the adult
 - (A) understands the purpose of the capacity assessment and that he or she has a right to refuse to undergo or to continue with the capacity assessment,
 - (B) appears to be capable of consenting to the capacity assessment, and
 - (C) has consented to the capacity assessment, or
 - ☐ (ii) in my opinion
 - (A) the adult appears not to be capable of consenting to the capacity assessment, and
 - (B) it is in the best interests of the adult to conduct the capacity assessment,
- or
- ☐ (b) has refused to undergo or to continue with the capacity assessment.

If (b) is checked,

- ☐ (i) a capacity assessment was not conducted, or
- ☐ (ii) the capacity assessment was discontinued.

Comments:

6. I have determined that

- ☐ (a) it is not necessary for the adult to have and the adult has not requested to have
 - (i) a person present to assist the adult in feeling comfortable and relaxed when undergoing the capacity assessment, or
 - (ii) the assistance of a person or the use of a device to communicate in order for the adult to be able to fully demonstrate his or her capacity during the capacity assessment,
- or
- ☐ (b) it is necessary for the adult to have or the adult has requested to have
 - (i) a person present to assist the adult in feeling comfortable and relaxed when undergoing the capacity assessment, or
 - (ii) the assistance of a person or the use of a device to communicate in order for the adult to be able to fully demonstrate his or her capacity during the capacity assessment,

If (b) is checked, set out what is considered necessary or what the adult has requested, as the case may be, as well as the steps taken to have a person present or provide the adult with the assistance of a person or device.

Comments:

7. I have determined that an assessment of the capacity of the adult to make decisions is warranted with respect to the adult's

- ☐ (a) health care,
- ☐ (b) temporary admission to a residential facility, or
- ☐ (c) discharge from a residential facility.

Comments:

8. I have asked the adult if there have been any significant changes recently in his or her beliefs and values related to making decisions about the personal matters identified in item 7 and the adult has informed me that

- ☐ (a) there have been significant changes recently in his or her beliefs and values related to making decisions about those personal matters, or
- ☐ (b) there have not been significant changes recently in his or her beliefs and values related to making decisions about those personal matters.

Comments:

9. The level of consciousness of the adult at the time of the capacity assessment was

- ☐ (a) alert, or
- ☐ (b) fluctuating.

10. I assessed the capacity of the adult to make the decision about

- ☐ (a) his or her health care, and in my opinion he or she
 - ☐ (i) has the capacity to make the decision, because he or she has, or
 - ☐ (ii) does not have the capacity to make the decision, because he or she does not have

the ability to understand the information that is relevant to the decision about his or her health care and to appreciate the reasonably foreseeable consequences of a decision or a failure to make a decision about his or her health care for the following reasons:

(set out the reasons for the opinion)

- ☐ (b) his or her temporary admission to a residential facility, and in my opinion he or she
 - ☐ (i) has the capacity to make the decision, because he or she has, or
 - ☐ (ii) does not have the capacity to make the decision, because he or she does not have

the ability to understand the information that is relevant to the decision about his or her temporary admission to a residential facility and to appreciate the reasonably foreseeable consequences of a decision or a failure to make a decision about his or her temporary admission to a residential facility for the following reasons:

(set out the reasons)

- ☐ (c) his or her discharge from the residential facility, and in my opinion he or she
 - ☐ (i) has the capacity to make the decision, because he or she has, or
 - ☐ (ii) does not have the capacity to make the decision, because he or she does not have

the ability to understand the information that is relevant to the decision about his or her discharge from the residential facility and to appreciate the reasonably foreseeable consequences of a decision or a failure to make a decision about his or her discharge from the residential facility for the following reasons:

(set out the reasons)

11. In forming my opinion about the matter referred to in item 10, I took into account the following:

- ☐ (a) whether the adult has the ability to retain information that is relevant to decisions;
- ☐ (b) the following:

(set out additional matters, if any)

Comments:

12. In my opinion, the adult

- ☐ (a) has the capacity to make decisions about his or her
 - ☐ (i) health care,
 - ☐ (ii) temporary admission to a residential facility, or
 - ☐ (iii) discharge from a residential facility,
 or
- ☐ (b) does not have the capacity to make decisions about his or her

- ☐ (i) health care,
- ☐ (ii) temporary admission to a residential facility, or
- ☐ (iii) discharge from a residential facility.

13. If in item 12 I have stated that in my opinion the adult does not have the capacity to make the decision about the health care or temporary admission to or discharge from a residential facility, I have considered whether the adult is likely to regain some or all of his or her capacity to make the decision, and I believe that the adult

- ☐ (a) is likely to regain some or all of his or her capacity to make decisions (the decision) about his or her
- ☐ (i) health care,
 - ☐ (ii) temporary admission to a residential facility, or
 - ☐ (iii) discharge from a residential facility;

(set out the reasons)

- ☐ (b) is not likely to regain some or all of his or her capacity to make decisions (the decision) about his or her
- ☐ (i) health care,
 - ☐ (ii) temporary admission to a residential facility, or
 - ☐ (iii) discharge from a residential facility.

(set out the reasons)

If (a) is checked, complete the following:

If a specific decision maker is appointed for the adult, I recommend that another capacity assessment of the adult be conducted no later than (day) of (month), (year).

14. I have attached more detailed information respecting the capacity assessment. (Optional)

- ☐ No

Dated at (location) in the Province of Alberta this (day) of (month), (year).
_____(signature of capacity assessor

_____(signature of capacity assessor)

