

the person terminates the agreement or until the person reaches 27 years of age.

Amended s. 7.1 of the *Public Guardian and Trustee Act* provides that when acting as trustee by consent for an adult who was formerly a child in continuing care, the Public Guardian and Trustee may authorize payment for all or part of the trust money for the maintenance, education, or benefit of the adult.

## **2. HEALTH CARE (CONSENT) AND CARE FACILITY (ADMISSION) ACT AMENDMENTS (NOVEMBER 4, 2019) [§1.7]**

Effective November 4, 2019, the *Health Care (Consent) and Care Facility (Admission) Act*, R.S.B.C. 1996, c. 181 was amended to bring into force provisions of Part 3 (Admission to a Care Facility). For more information, see “Personal Decision Services” in this chapter and “Personal Decision Services” in chapter 2.

## **IV. THE ROLES OF THE PUBLIC GUARDIAN AND TRUSTEE [§1.8]**

During the fiscal year 2021–2022, the Public Guardian and Trustee provided services to approximately 26,700 clients and managed approximately \$1.3 billion of trust assets. When managing the financial affairs of an individual or the assets of an estate or trust, the Public Guardian and Trustee is bound by fiduciary principles and the law governing trustees. As with all trustees, the Public Guardian and Trustee is accountable to clients and ultimately to the court for the administration of assets held in trust.

The Public Guardian and Trustee provides services to clients in a number of distinct roles. Some of these roles can be traced back to early common law, while others have arisen with the enactment of legislation. Many roles combine the legal, financial, and social services expertise of the Public Guardian and Trustee. These roles are:

- *Trustee*: The Public Guardian and Trustee is appointed by statute, deed, will, or court order to administer assets for the benefit of minors or incapable adults.
- *Committee*: The Public Guardian and Trustee is appointed by court order to make legal and financial decisions on behalf of incapable adults, or to make decisions on personal or health care needs of incapable adults. The Public Guardian and Trustee may

also be appointed by certificate of incapability to be a statutory property guardian (committee of estate) to make decisions about an adult's financial affairs only.

- *Property Guardian:* The Public Guardian and Trustee is appointed by court order or statute to protect the legal and financial interests of minors, primarily those who are in the continuing care of the province.
- *Temporary Substitute Decision Maker:* The Public Guardian and Trustee is designated under the *Health Care (Consent) and Care Facility (Admission) Act* to act as the temporary substitute decision maker for an adult when the adult is incapable of providing consent to health care or admission to a care facility, has no committee or representative legally authorized to provide such consent on the adult's behalf, and there is no family member or close friend available and qualified to be chosen to make the health care or admission decision. In these circumstances, the Public Guardian and Trustee can also authorize other individuals to provide consent to health care or admission on behalf of an incapable adult.
- *Personal Representative:* The Public Guardian and Trustee may be appointed in a will to act as an executor or may act as an administrator of a deceased person's estate. Under the *Estates of Missing Persons Act*, the Public Guardian and Trustee acts as curator by court appointment to manage the estates of missing persons when no one else is determined to be more suitable to fill this role.
- *Monitor of Committees:* The Public Guardian and Trustee is appointed under the *Patients Property Act* to monitor the actions of committees.
- *Investigation of Trustees and Other Fiduciaries:* The Public Guardian and Trustee is authorized under the *Public Guardian and Trustee Act* to investigate the activities of a committee, an attorney acting under an enduring power of attorney, a representative acting under a representation agreement, and certain trustees, where the assets or interests in a trust of a minor or incapable adult in a trust may be at risk. Investigations can also be carried out when an adult does not have a committee, attorney, or representative but the adult is apparently abused or neglected as defined in the *Adult Guardianship Act*. Additional investigation powers are granted in the *Representation Agreement Act* and the *Power of Attorney Act*.
- *Review of Settlements of Claims for Damages Brought by Minors and Incapable Adults:* The Public Guardian and Trustee is

authorized under the *Infants Act* to approve settlements of \$50,000 or under, exclusive of costs and interest, for unliquidated damage claims brought by minors. For settlements over \$50,000 exclusive of costs and interest, the Public Guardian and Trustee provides written comments to the court evaluating the sufficiency of the settlement. The Public Guardian and Trustee may also provide recommendations to the court regarding the settlement of an incapable adult's claim for damages (Supreme Court Civil Rule 20-2(17) and (18)).

- *Review of Applications to be Appointed Trustee of a Trust for a Minor:* A person may apply to court under the *Family Law Act* to be appointed trustee of a trust for a minor. The Public Guardian and Trustee provides written comments and recommendations to the court as required by the *Family Law Act*.
- *Litigation Guardian:* The Public Guardian and Trustee is appointed under the *Public Guardian and Trustee Act* to act as litigation guardian for minors for whom the Public Guardian and Trustee is guardian of estate and for all other minors when there is no one else willing or able to act, and the Public Guardian and Trustee considers it to be in the best interest of the minor to do so; and to act as litigation guardian for adults for whom the Public Guardian and Trustee is committee of estate (Supreme Court Civil Rule 20-2(6)).
- *Litigation Representative:* The *Public Guardian and Trustee Act* provides that the Public Guardian and Trustee may be appointed as litigation representative to represent the estate of a deceased person for whom no other legal personal representative exists.

## **V. SERVICES PROVIDED BY THE PUBLIC GUARDIAN AND TRUSTEE [§1.9]**

The Public Guardian and Trustee provides its services and carries out its responsibilities identified above through three operational divisions: Services to Adults; Child and Youth Services; and Estate and Personal Trust Services. Each of these divisions is described briefly below and is addressed more fully in the chapters that follow.

### **A. SERVICES TO ADULTS [§1.10]**

The Public Guardian and Trustee delivers three services to adults who require assistance: