



Responding to the Ombudsperson's Report

# **“No Longer Your Decision – BC’s Process for Appointing the PGT to Manage Financial Affairs of Incapable Adults”**

*BC Psychogeriatric Association 10<sup>th</sup> Annual Conference  
“Supporting Transitions in Seniors Mental Health”  
May 2, 2014 1:00 – 2:00pm*

***Kimberly Azyan** – Director, Services to Adults – PGT  
**Alison Leaney** – Provincial Coordinator Vulnerable Adults  
Community Response, Service to Adults - PGT*

## **OUR VISION**

*Rights, Choices and*

*Security for all*

*British Columbians*



**PUBLIC GUARDIAN  
AND TRUSTEE OF  
BRITISH COLUMBIA**



# Outline

1. Welcome!
2. Overall Context – session is PGT perspective
3. Legislative Context
4. Ombudsperson's Report / Recommendations
5. Philosophical Double Check – Fostering Independence & Involvement in Decision-Making – *Discussion*
6. What's Changing? – Review of CI Process Map
7. Questions / Discussion / Conclusion



# Overall Context



# Legislative Context – Adult Guardianship

*Representation  
Agreement Act  
(RAA)*

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

*Power of Attorney  
Act (POAA)*

*Public Guardian  
and Trustee Act  
(PGTA)*

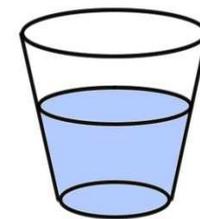
*Adult Guardianship  
Act (AGA)*

*Patients Property  
Act (PPA)*



# The AGA & PPA: From 1993-2014

- ❖ AGA was to modernize / replace PPA
- ❖ **February 2000** – other sections proclaimed:
  - Abuse/neglect – AGA Part 3
  - PGT Act – including protective measures and investigations
  - Health care consent
- ❖ **September 2011** – changes to EPOAs, Ras Advance Directives
- ❖ **December 2014** – AGA Part 2.1 and PPA amendments re: **Certificate of Incapability Process**





NO LONGER YOUR DECISION: BRITISH COLUMBIA'S  
PROCESS FOR APPOINTING THE PUBLIC GUARDIAN AND TRUSTEE  
TO MANAGE THE FINANCIAL AFFAIRS OF INCAPABLE ADULTS



## Ombudsperson's Recommendations

- ❖ PGT Protective Measures
- ❖ Notification
- ❖ Rights advice
- ❖ Assessment processes
- ❖ Fostering independence / involvement of the adult in D-M
- ❖ Training for HAs



The Office of the  
**ombudsperson**

B.C.'s Independent Voice For Fairness

Public Report No. 49 | FEBRUARY 2013  
to the Legislative Assembly of British Columbia



# Recommendations Resulted in Changes to 3 Laws

Protective  
Measures  
(s.19 PGTA)

Statutory  
Property  
Guardianship  
(Implement  
selected  
sections of Part  
2.1 AGA)

Involvement  
Of Adult  
(s.18 (2) PPA)



# Fostering Independence / Involvement in Decision Making

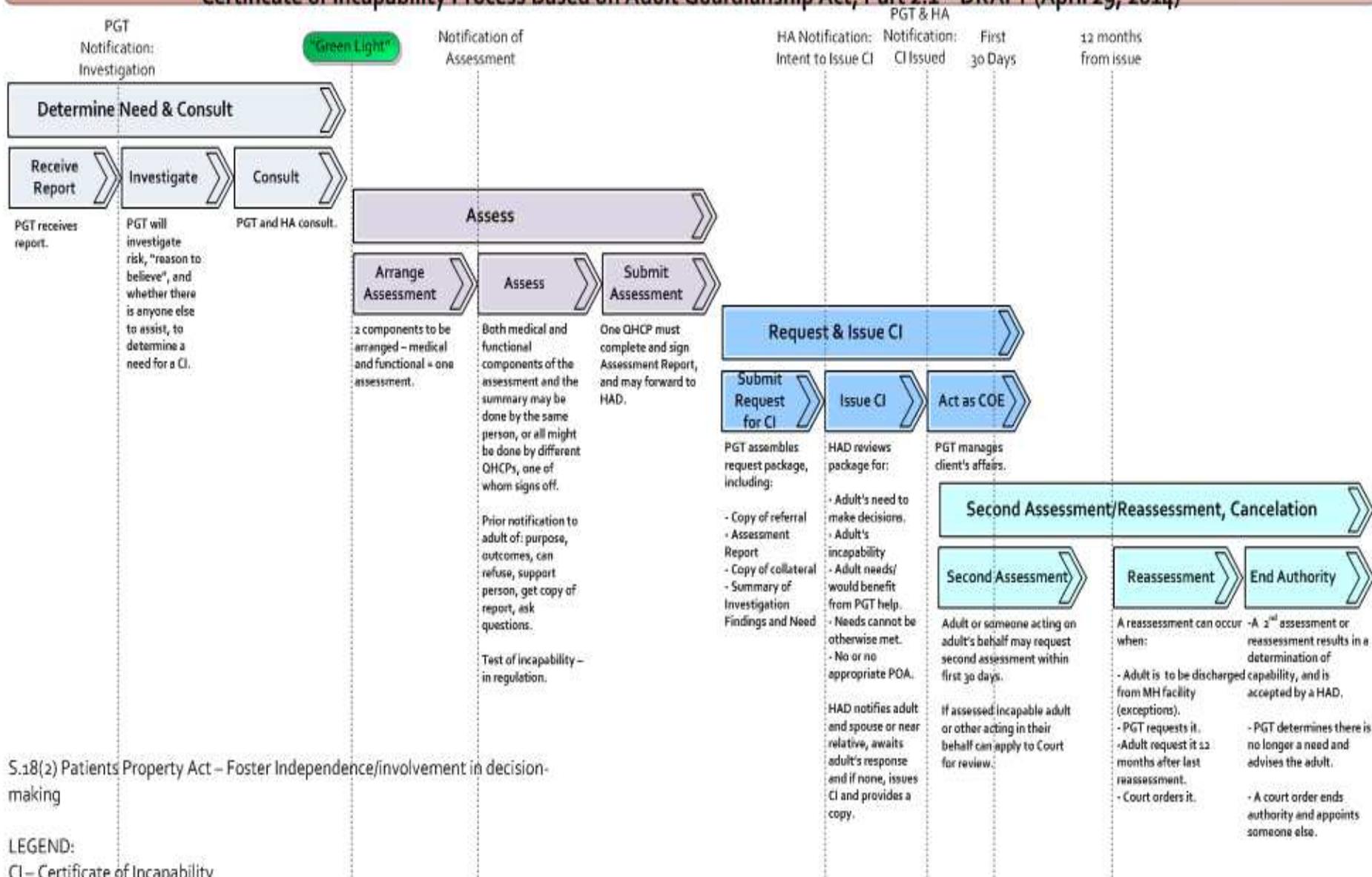
“A committee must, to the extent reasonable, foster the independence of the patient and encourage the patient’s involvement in any decision making that affects the patient.” (PPA s.18(2))

❖ Applies to all committees – private and PGT

❖ Discuss:

1. What does this mean to you?
2. How can we all use to enhance practice?
3. How does PGT already do this?
4. What could PGT do differently?
5. What info could PGT make available to private committees?

# Certificate of Incapability Process Based on Adult Guardianship Act, Part 2.1 – DRAFT (April 29, 2014)



S.18(2) Patients Property Act – Foster Independence/Involvement in decision-making

- LEGEND:**  
 CI – Certificate of Incapability  
 "Green Light" - Points of agreement that CI Process has officially begun  
 HA – Health Authority  
 HAD – Health Authority Designate (Director of mental health facility/psych unit)  
 PGT – Public Guardian and Trustee  
 QHCP – Qualified Health Care Provider (Assessors)



# CI Process Map

## *Phase 1*

**DETERMINE NEED AND  
CONSULT**



# PGT Notification of Investigation / Changes to PMs

## New Law

- ❖ PMs now for 30 days renewable 3x (PGTA s.19)

## New Practices

- ❖ Establishing “reason to believe” by means other than Preliminary Medical Opinion where possible
- ❖ Written notification of investigation – now in revised letters / publications
  - Steps
  - Possible outcomes
  - Opportunity to seek legal advice



# HA/PGT “Consultation”

## Before

- ❖ Either a HA or PGT starts process of a CI by getting the medical and functional assessments – may not be in touch until nearer the end of the process

## After

### *New Law*

- ❖ HAD must consult with PGT prior to issuing (AGA s.32(3.1))

### *Proposed Practice*

- ❖ “Green Light” – agreement that CI is the only/best solution after doing investigation – need to know when CI process begins





# CI Process Map

## *Phase 2*

# ASSESS



# Arrange Assessment – “Who”?

## Before

- ❖ PGT often requests a Preliminary Medical Opinion from a physician
- ❖ Functional assessments happen in a variety of ways sometimes involving a variety of disciplines

## After

### *New Law*

- ❖ One assessment that must include both a medical and a functional component –
  - **medical** – medical practitioner
  - **functional** – medical practitioner can do both or another QHCP prescribed in Reg, meeting limits / conditions set by their College



# Arrange Assessment – “How”?

## Before

- ❖ Adult told of assessment but sometimes unclear for what purpose
- ❖ No specific test of incapability in PPA

## After

### *New Law*

- ❖ Adult must be notified beforehand of purpose, outcomes, that they can refuse, have a support person, get a copy and ask questions (unless risk of harm)
- ❖ New test of incapability – understanding of:
  - Nature of financial affairs and value
  - Obligations owed to others
  - Decisions needed
  - Risks / benefits to decisions being made / not made
  - All apply to adult’s own situation
  - Changes if a reassessment



# Submit Assessment – Finalizing / Advising

## Before

- ❖ Best practice of informing adult of outcome of assessment

## After

### *New Law*

#### Responsible QHCP:

- ❖ Completes Assessment Report
- ❖ Attaches details
- ❖ Explains details / results to adult
- ❖ Offers adult a copy

Exceptions for harm



# CI Process Map

## *Phase 3*

# REQUEST AND ISSUE A CI



# Request / Consider CI

## Before

- ❖ Director of Mental Health Facility or Psych Unit notifies adult of intent to issue unless harm
- ❖ Adult has opportunity to respond

## After

### *New Law*

HAD must issue notice of intent to issue a certificate of incapability:

- ❖ To adult, and if contact information is known, to spouse or a near relative
- ❖ Exception for serious physical or mental harm; or significant damage or loss to property
- ❖ Give opportunity to respond (AGA s.32(3.1))



# Issue CI – “Who”?

## Before

- ❖ Issued by a Director of Mental Health Facility or Psych Unit
- ❖ Linked to Mental Health Act

## After

### *New Law*

- ❖ Issued by a Health Authority Designate –  
“any person designated by a prescribed body as having authority to issue a CI”
- ❖ Delinked from Mental Health Act



# Issue CI – “How”?

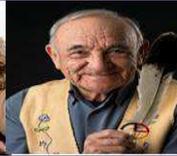
## Before

- ❖ Director uses Director’s Checklist to decide about issuing a CI
- ❖ Adult may be given a copy

## After

### *New Law*

- ❖ HAD issues the certificate if criteria in Act is met:
  - Adult needs to make decisions
  - Adult assessed as incapable
  - Needs/would benefit from PGT help
  - No, or no appropriate, POA (AGA s.32(3))
- ❖ When certificate is issued, HAD must forward to PGT, advise adult and spouse/near relative and provide each a copy (AGA s.32(3.1))



# PGT Provides Rights Advice / Acts as Committee of Estate

## Before

- ❖ PGT lets adult and others know PGT now Committee of Estate
- ❖ Nothing noted about rights to second or reassessments

## After

### *New Law*

The PGT must advise the adult, and if contact information is known, the spouse or a near relative, that:

- ❖ The PGT is the adult's Committee of Estate and may make decisions respecting the adult's financial affairs
- ❖ The adult or someone acting on their behalf may request a 2<sup>nd</sup> assessment within 30 days
- ❖ If assessed incapable, the adult or someone acting on their behalf may apply to court for review (AGA s.33)



# CI Process Map

## *Phase 4*

**SECOND ASSESSMENT,  
REASSESSMENT,  
CANCELLATION**



# Second Assessment

## Before

- ❖ Nothing about second assessments

## After

### *New Law*

- ❖ If after the second assessment, the QHCP determines adult is incapable, the court can review a finding of incapability (AGA s.33(3))



# Re-Assessment

## Before

- ❖ Adult can be reassessed but no legally required process

## After

### *New Law*

Adult must be reassessed if:

- ❖ Psych treatment, about to be discharged, unless:
  - Don't know PGT is CoE
  - No reason to believe adult would be assessed capable
  - Discharged less than 48 hours after admission
- ❖ PGT requests it
- ❖ Adult requests it – 12 months after last reassessment
- ❖ Court orders it (AGA s.34)



# Ending Authority

## Before

Ended via:

- ❖ Court order
- ❖ Certificate of Capability through HAs
- ❖ Discharge under s.11 of the *Patients Property Act*

## After

### *New Law*

Ended via:

- ❖ Court order
- ❖ Cancellation by HAD as a result of accepting a determination of capability from a QHCP (second or reassessment)
- ❖ PGT is satisfied the adult no longer needs a guardian and ends authority (AGA s.37(3))



# Summary of Benefits

- ❖ All SDMs including Committees to follow same set of principles of inclusion
- ❖ Legislated notification and appeal rights
- ❖ Standardized assessments and QHCPs to do them
- ❖ CI process now de-linked from the *Mental Health Act*



## OUR VISION

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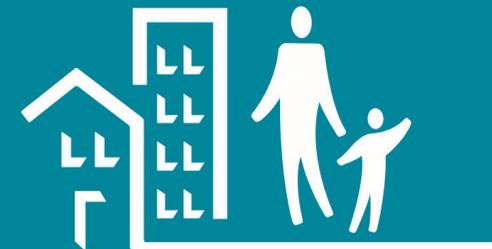
*Security for all*

*British Columbians*

# Contacting the PGT

Visit the PGT's website at:

[www.trustee.bc.ca](http://www.trustee.bc.ca)



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**Questions?**