

How to Apply for Adult Guardianship

Adult Guardianship Self-Help Guide



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**Public Guardian and
Trustee of Yukon**

Information Resources – Whitehorse, Yukon

Seniors' Services/Adult Protection

867-456-3946; toll free (in Yukon) 1-800-661-0408, local 3946

Email: hss@gov.yk.ca

Web site: www.hss.gov.yk.ca/seniorservices.php

Location: 100–204 Black Street

Office of the Public Guardian and Trustee

867-667-5366; toll free (in Yukon) 1-800-661-0408, local 5366

Email: publicguardianandtrustee@gov.yk.ca

Web site: www.publicguardianandtrustee.gov.yk.ca

Location: Third Floor Andrew A. Philipsen Law Centre, 2134–2nd Avenue

Yukon Public Law Library

867-667-3086; toll free (in Yukon) 1-800-661-0408, local 3086

Email: yukon.law.library@gov.yk.ca

Web site: www.justice.gov.yk.ca/prog/cs/library.html

Location: Ground Floor Law Courts, 2134–2nd Avenue

Registry of the Supreme Court of Yukon

867-667-5937; toll free (in Yukon) 1-800-661-0408, local 5937

Email: courtservices@gov.yk.ca

Web site: www.yukoncourts.ca/courts/supreme.html

Location: Ground Floor Law Courts, 2134–2nd Avenue

Non - Government

Yukon Public Legal Education Association (YPLEA)

867-668-5297; toll free (in Yukon) 1-866-667-4305

Email: ypleyt@gmail.com

Web site: www.yplea.com

Law Society of Yukon (Lawyer Referral Service)

867-668-4231; toll free (in Yukon) 1-800-661-0408, local 5937

Email: info@lawsocietyyukon.com

Web site: www.lawsocietyyukon.com

Lawyer Referral Service – half-hour consultation with a lawyer – \$30 incl. GST

Lawyers

To contact a lawyer's office, look in the phone directory under "Lawyers" in the Yellow Pages or under names of local law firms

IMPORTANT!

This guide has been produced by the Office of the Public Guardian and Trustee in the Yukon Department of Justice. It is intended to be used as a guide only and is not considered a comprehensive legal resource.

The information provided does not replace a lawyer's advice and cannot teach you everything you need to know. Even if you decide to proceed without a lawyer, you should consult a lawyer for interpretation of the law that applies to your case and for other legal advice.

The information provided in this guide is believed to be correct as of its date of publication. Please refer to the **List of Key Words Used in Adult Guardianship** for definitions of any unfamiliar terms used in this guide.

HOW TO APPLY FOR ADULT GUARDIANSHIP

This guide covers the process of applying for permanent guardianship of an adult. An application for temporary guardianship can be made on an emergency basis only for guardianship of an adult's financial affairs for a maximum of 180 days. See the guide **How to Apply for Temporary Guardianship of an Adult** if you are seeking temporary guardianship.

There are two ways to proceed if you have decided to apply for guardianship of an adult.

1. You can prepare the application yourself by using this guide. It is designed to assist people who wish to make an application for guardianship on their own. It is always recommended that you consult a lawyer.
2. You can hire a lawyer to prepare the application on your behalf. If you do not have a lawyer and would like to obtain one, contact Legal Aid or the Yukon Law Society and they will provide you with the names of lawyers in your community who specialize in this area of practice.

This guide provides information on the documents that are required to be filed with the Supreme Court when making a **Guardianship Application** as well as instructions for their completion.

Applying for a Guardianship Order and costs

The application form that must be prepared and the various documents required to be included in the application may have preparation costs. You can ask the court to have these costs reimbursed from the adult's assets.

For example, you will be required to hire and pay for a qualified assessor to prepare an Incapability Assessment Report. A list of assessors is available at the Public Guardian and Trustee (PGT) Office and on the PGT web page. It is important to discuss the schedule of costs with the assessor before they start the assessment.

There may also be costs for obtaining medical reports and photocopying documents. These costs may be reimbursed from the adult's assets if a Guardianship Order is granted and the court directs that you be reimbursed. You must ask for reimbursement of costs in your application and at the court hearing.

The costs associated with the preparation of the assessment report for guardianship can sometimes pose a hardship for individuals or families. Should this be the case, you should contact the PGT Office.

The court may also order that the guardian be reimbursed from the adult's assets for reasonable expenses incurred in performing the duties or exercising the authority under the *Decision Making, Support and Protection to Adults Act, Schedule A, Adult Protection and Decision Making Act*. Be sure to include a request for reimbursement of expenses (including the Incapability Assessment Report) in your application and at the court hearing.

Getting organized

Keep all your documents and papers in a file as you work through the process. Please type or print documents and ensure they are neat and legible. As these are legal documents that will be reviewed by the court, it is important to ensure the documents appear tidy and professional.

Complete the forms

First of all, you will need to have a qualified assessor complete an **Incapacity Assessment Report** (Form 6).

If the assessor finds that the adult is capable, you must discontinue the process of applying for guardianship. As the person requesting the report, you are responsible for paying the assessor for the cost of preparing the report.

If the assessor finds that the adult is incapable, ask them to attach a copy of their *curriculum vitae* (CV) so that the court will have information about the assessor's experience and qualifications. You will need to complete Forms 3, 4, 5 and 7, which can be obtained from the PGT Office or the PGT adult guardianship web page at <http://www.publicguardianandtrustee.gov.yk.ca/adultguardianship.html>.

You can fill the forms out on the computer, but be sure to save each document needed for the application process and print two copies of each document. The clerk may ask you to revise the wording on your forms before filing them in court. If you have any questions about what kind of information is required and in what format, it is a good idea to check with the clerk before you present your documents for filing in court.

Filing with the court registry

Once you have completed the forms, contact the Trial Coordinator in Whitehorse at 867-667-3442 (toll-free from within Yukon 1-800-661-0408 extension 3442) to obtain a hearing date and time. Enter this information in the space provided on the front page of Form 3.

Make copies of the completed **Guardianship Application** (Form 3) and Forms 4, 5, 6 and 7. If there are any documents in which the adult has stated their wishes about the choice of a guardian, they should be enclosed with Form 3 and also copied. Please see instructions in the next section below about the number of copies required.

Take all your original documents and copies to the court registry in Whitehorse for filing with the Supreme Court of Yukon. (If you live outside Whitehorse, contact the clerk about sending in your documents by mail or fax.) The court registry will stamp all of the documents and copies with the date of filing. You will be charged a filing fee that you can ask the court to have reimbursed from the adult's assets.

The documents have a space for a Supreme Court file number (S.C. No.) at the top of the page. The clerk will assign and stamp the file number on your guardianship forms. It is up to you to write this same file number on all future documents.

The clerk will file the originals and give the copies back to you so that you can keep one set for your records and give copies to those people you have indicated that you will serve with your Guardianship Application.

Copies and Affidavits of Service

You will need to make a copy of **each** document for your records, one copy for each person you are serving, and one copy will need to be attached as an exhibit for each Affidavit of Service (Form 9). You can find the Affidavit of Service on the PGT web site.

Wherever possible, you should serve the documents in person. Requirements for service are set out in Subsection 30(5) of the Act, found at <http://www.gov.yk.ca/legislation/acts/Aadpr.pdf> and also at the end of this guide. This section lists all the parties who must be served with a Guardianship Application at least seven days prior to the date set for the hearing. (Don't forget to serve the Public Guardian and Trustee.)

After you have served all the parties you are required to serve, complete and swear an Affidavit of Service by stating who you served, where and when, and with what documents.

If you serve the documents yourself, you will only need one Affidavit of Service. For example, if you are serving four people, you will need the original and six copies of each document:

- original for the court (clerk places on the court file)
- one copy for your records
- four copies (one copy to give to each person served)
- one copy for the Affidavit of Service for all the people you serve

If you ask the Sheriff or some other office or person to serve the documents, you will need an Affidavit of Service for each person served. For example, if you are serving four people, you will need the original and nine copies of each document:

- original for the court (clerk places on the court file)
- one copy for your records
- four copies (one copy to give to each person served)
- four copies (one copy for each Affidavit of Service for all the people served)

File the affidavit(s) and supporting documents with the Supreme Court before the date of the hearing so that the court knows that you have complied with the requirements for service.

Ready to Begin

Read the rest of this guide carefully before you start working on your application. The checklist contains the steps you must perform to prepare your documents, appear at the hearing and prepare an order based on the court's direction.

INITIAL APPLICATION FOR GUARDIANSHIP OF AN ADULT - CHECKLIST

Print this checklist to help you follow the steps in completing your guardianship application process. Please note that many of these documents must be sworn before a Notary Public.

PHASE I – Complete Guardianship Forms 3 to 7	
<input type="checkbox"/>	Complete Form 3 - Guardianship Application . This is a summary that includes information about you as the proposed guardian, information about the adult, and the guardianship duties being requested.
<input type="checkbox"/>	Complete Form 4 - Applicant's Affidavit . This is a statement sworn by you (the proposed guardian) which states that the adult requires a guardian.
<input type="checkbox"/>	Complete Form 5 - Statement of Proposed Guardian . This provides details about your suitability to be a guardian and your awareness of the duties and limitations surrounding your possible appointment.
<input type="checkbox"/>	Form 6 - Incapacity Assessment Report . This report must be completed by a qualified assessor, who must provide a <i>curriculum vitae</i> (CV) that outlines their experience and qualifications and attach it to the report. Information about assessors can be obtained from the PGT office, or from the PGT web site.
<input type="checkbox"/>	Complete Form 7 - Preliminary Guardianship Plan . This is a more in-depth report on the duties being sought as the proposed guardian, including whether these duties are for financial, personal, health care or legal matters, and the range and management of these duties.

PHASE II – Obtain a Court Date and File Your Application	
<input type="checkbox"/>	Call the Trial Coordinator about available hearing dates for the application. (If you live outside Whitehorse you can ask to have the application heard by phone.) Print the hearing date on Form 3 and make enough copies for yourself and for serving those parties you have indicated in your application.
<input type="checkbox"/>	Speak to the clerk before the date of the hearing about what you need to do if you would like to appear by phone.
<input type="checkbox"/>	Take or send the original and copies of the required forms to the court registry on the ground floor of the Law Courts building in Whitehorse. The clerk will stamp both the original forms and the copies with the file number and date of filing and will return the copies to you. There is a fee to open a file in the Supreme Court.
<input type="checkbox"/>	Your application is now filed and your hearing date is now set.

PHASE III – Serve Documents Before the Hearing



At least **seven** days prior to the hearing of the application, serve the documents yourself or arrange to serve a copy of the filed **Guardianship Application** (Form 3) and of the filed Forms 4, 5, 6 and 7 on:

- the adult who is the subject of the application;
- the adult’s spouse, if any;
- the adult’s adult child, parent, adult sibling or other blood relative;
- the proposed guardian;
- the person in charge of any hospital or care facility where the adult is currently admitted or resides;
- the Public Guardian and Trustee;
- any other person authorized to act on the adult’s behalf under a power of attorney, a proxy under a directive, a supported decision-making agreement or a representation agreement;
- a person who has custody of a person who is 18; and
- any other person the Supreme Court may direct.



Complete and swear an Affidavit of Service for all the parties you serve if you serve them yourself, and file the affidavit and supporting documents with the Supreme Court before the hearing date. If you have someone else serve the documents, you must provide them with a blank Affidavit of Service and supporting documents for each person they serve. You can obtain the Affidavit of Service (Form 9) from the PGT web site. Requirements for service follow this checklist.

PHASE IV – Court Hearing and Follow-up

<input type="checkbox"/>	On your hearing date, go to the court registry if you are appearing in person. Check with the clerk to find out the courtroom where your application will be heard. Arrive at least 15 minutes early to ensure your materials are organized and that you are prepared to speak to the judge. The judge in Supreme Court is referred to as “Your Honour”.
<input type="checkbox"/>	If you are appearing by phone, call the phone number the clerk gave you at the appropriate time.
<input type="checkbox"/>	At the end of the hearing, the court may grant your application for a Guardianship Order or make any order that the judge believes is fair.
<input type="checkbox"/>	Produce an order based on the court’s direction and submit the original and copies to the court registry for approval. The clerk will return all copies to you. Use Form 44 from the Supreme Court web site at www.yukoncourts.ca .
<input type="checkbox"/>	Complete Form 8 - Inventory, Account and Subsequent Guardianship Plan . File it in court within six months of your appointment as guardian unless the court orders differently. This is a listing of all the adult’s financial information, personal belongings (assets) and debts.

REQUIREMENTS FOR SERVICE OF DOCUMENTS

Parties to be served

Section 30(5) of the *Decision-Making, Support and Protection to Adults Act, Schedule A, Adult Protection and Decision Making Act*, (found at <http://www.gov.yk.ca/legislation/acts/Aadpr.pdf>) sets out who must be served with a Guardianship Application and the time period for doing so:

- (5) A copy of the application and the accompanying reports and plan must be served, at least 7 days prior to the hearing of the application, on the following:
- the adult who is the subject of the application;
 - the adult’s spouse, if any;
 - where the adult has an adult child, a parent, an adult sibling, or any other adult relative other than a relative by marriage, at least one of them;
 - the proposed guardian;

- e) the person in charge of any hospital to which the adult is currently admitted or care facility where the adult resides;
- f) the Public Guardian and Trustee;
- g) any person who is authorized to act on behalf of the adult under a power of attorney of which the applicant is aware;
- h) any person who is a proxy for the adult under a directive of which the applicant is aware;
- i) any person who is an associate decision-maker for the adult under a supported decision-making agreement of which the applicant is aware;
- j) any person who is a representative for the adult under a representation agreement of which the applicant is aware;
- k) in the case of an application made for a person who is 18 years of age, a person who has custody under the *Children's Law Act* or the *Child and Family Services*;
- l) any other person the Supreme Court may direct.

NOTES

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For more information, or to obtain copies of these publications, please contact:

Government of Yukon, Department of Justice

Public Guardian and Trustee

Third Floor, Andrew A. Philipsen Law Centre

Second Avenue (between Wood Street and Jarvis Street)

Box 2703, Whitehorse, Yukon Y1A 2C6

www.justice.gov.yk.ca