

Guardianship by Country:

Resource for Second World Congress on Adult Guardianship

 <p>Country: Canada Population: 33.5 million Number of people under Adult Guardian/Guardianship: Unknown. No statistics are gathered and maintained at the national level.</p>
<p>Relevant legislation Canada has 13 jurisdictions; 12 jurisdictions are common law, one follows a Civil Code. Each jurisdiction has an array of statutes and/or statutory provisions governing adult guardianship, adult protection, adult substitute decision-making, adult supported decision-making, public guardian and trusteeship, and trusts. Additionally, Federal legislation provides for various forms of “pension trusteeship.”</p> <p>The superior legislation is the Canadian Charter of Rights and Freedoms.</p>
<p>Key terminology adult guardianship, adult protection, personal guardians, property guardians, committeeeship, substitute decision-making, public guardians and trustees, supported decision-making.</p>
<p>What types of guardianship exist? (personal welfare/financial affairs) guardianship of the person, guardianship of the estate (property), guardianship of both the person and property. The terminology for guardianship varies by jurisdiction. Generally, guardianship is only to be used as an absolute last resort.</p>
<p>Aside from personal appointments, who has the power to appoint an adult guardian? There are no “personal appointments”. Adults who want to plan for the prospect of incapacity will use either an enduring power of attorney or a personal directive of some kind; usually both.</p> <p>Guardians of the person/property are appointed by the superior court of a province or territory (names vary). This is constitutionally determined and was confirmed in the Supreme Court of Canada decision in <i>Re Eve</i>.</p>
<p>What criteria do the court need to consider when deciding the need for a guardian? Eligibility criteria varies by jurisdiction. However, in general, there must be some kind of mental incapacity combined with both a need for guardianship and a perceived benefit to the adult. Importantly, the statutory criteria (and the courts) are increasingly swinging towards ensuring that alternatives to guardianship are considered and attempted before an application is made/a guardian is appointed.</p>
<p>What is the potential duration of an order? The duration varies and is typically determined by the court or by the governing legislation, or by the needs of the adult.</p>
<p>Can a person under guardianship seek review of a guardian’s appointment and/or a guardian’s decisions? Opportunities for review also vary. In more progressive jurisdictions the person under guardianship can seek review. In most jurisdictions a review can be sought by someone acting on behalf of the affected adult</p>

<p>Who can be appointed as guardian? (eg family members, private guardian, private body, public body)</p> <p>Family, friends, circle of friends, public guardian and trustee. Financial institution in the case of guardianship of property. Private sector (i.e., for profit) guardianship is prohibited.</p>
<p>What are the responsibilities of an adult guardian? (eg what principles or guidelines must they comply with)</p> <p>Responsibilities vary by jurisdiction. In general, legislation prescribes duties and responsibilities of an adult guardian. At the core of guardianship are the law of agency and the law of trusts, but these are supplemented by modern and progressive notions of limited and supportive guardianship, etc.</p>
<p>How are adult guardians monitored and/or supported? (eg overseeing body, support for volunteer guardians)</p> <p>There is a Public Guardian and Trustee in each jurisdiction (titles vary).</p>
<p>Does an existing enduring Power of Attorney (personal welfare/financial) remove the need for guardianship when capacity is lost?</p> <p>Sometimes. Usually existing incapacity planning documents (names vary) will only be disturbed if there is something amiss (e.g., abuse or neglect of the adult by the person appointed or named to be guardian)</p>
<p>What costs are associated with guardianship and who pays? (eg application costs, court costs, yearly service fees)</p> <p>Court application costs vary by jurisdiction. The applicant may seek reimbursement from the property of the adult once appointed. Public guardian and trustee and a financial institution may charge prescribed fees for managing the adult's property.</p>
<p>Additional comments (Interesting elements of your country's system than are not covered above)</p> <p>The general trend in Canada is away from the use of court appointed guardians/guardianship in favour of finding and using more flexible, sensitive, effective and humane alternatives that respect both the adult's wishes and the adult's network (family, friends, etc.). Supported decision-making alternatives are growing by leaps and bounds, especially for people with developmental disabilities.</p> <p>Guardianship is not quite a dirty word, but we are getting there; it is definitely seen as undesirable, but a necessary evil.</p> <p>Safeguards are provided by adult protection legislation and the system of oversight provided by well funded and established public guardian and trustee services. Canada has a well established, publicly funded and effective universal health care and social service apparatus which provides an array of services supporting progressive policies and legislation.</p> <p>The provisions of the UN Convention, especially Article 12, are already being endorsed in most jurisdictions, but particularly west of the Great Lakes where things like supported decision-making have been recognised in legislation and policy for nearly 20 years.</p>