

# Perspectives on the Continuum of Decision Making in BC's Adult Guardianship Legislative Framework

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It is a package of laws that:

- enshrines a capable adult's right to make their own personal and financial decisions, even if it puts them at risk
- provides instruments for adults to plan ahead for their legal, financial, health, and personal care
- ensures that there is a response to concerns of abuse, neglect, and self neglect of vulnerable adults

## **What is Adult Guardianship?**

## Self Determination

- All adults are entitled to live in the manner they wish and to accept or refuse support, assistance or protection as long as they do not harm others and they are capable of making decisions about those matters.

## Just Enough Support

- All adults should receive the most effective, but the least restrictive and intrusive, form of support, assistance or protection when they are unable to care for themselves or their financial affairs.

## Court as a Last Resort

- The court should not be asked to appoint, and should not appoint, guardians unless alternatives, such as the provision of support and assistance, have been tried or carefully considered.

# Guiding Principles

- Until the contrary is demonstrated, every adult is presumed to be capable of making decisions about their personal care, health care and financial affairs.
- An adult's way of communicating with others is not grounds for deciding that he or she is incapable of making decisions.

## **Presumption of Capability**

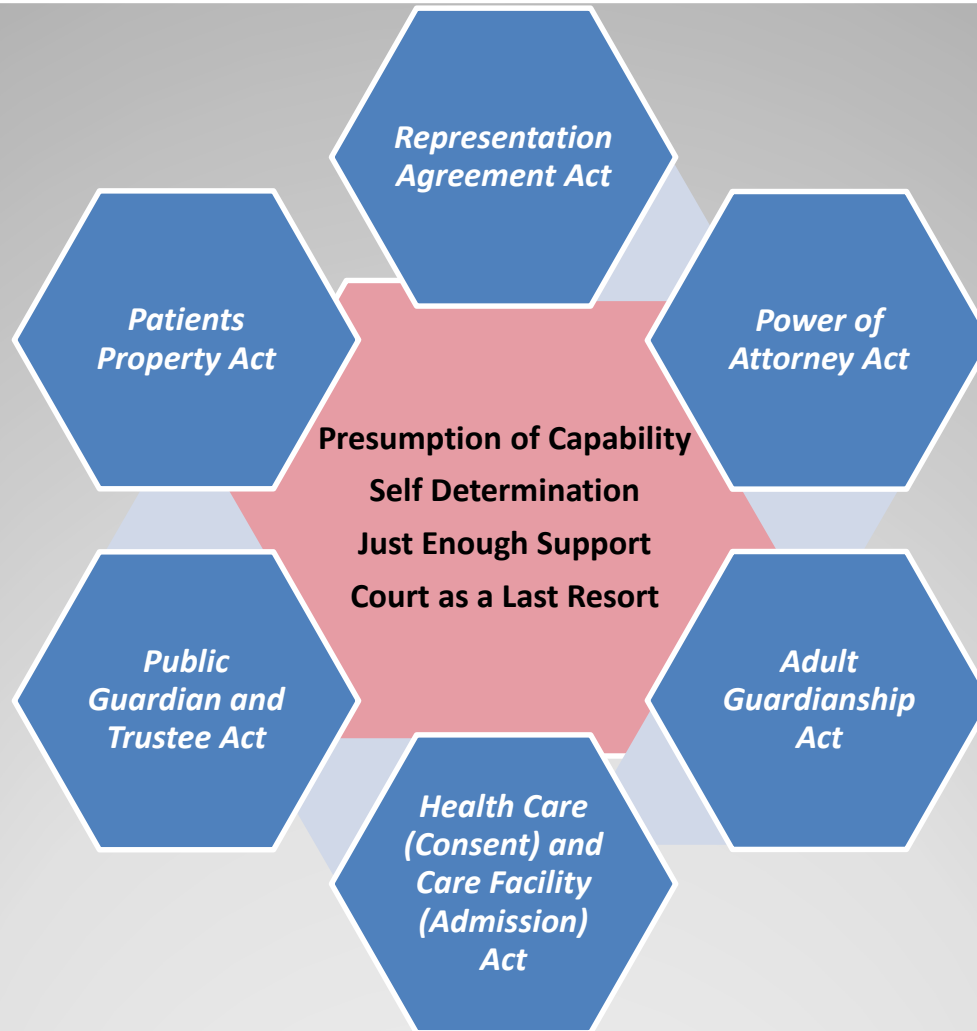


Adult makes their own decisions

Adult decides who will make decisions for them if they cannot

Others can be appointed if the adult hasn't chosen anyone or their plans have fallen through

## Continuum of Decision Making



**Guiding Principles are at the Heart of Adult Guardianship Legislation**

- **Financial:**
  - Attorney (Enduring Power of Attorney)
  - Representative (Representation Agreement) for routine financial affairs – s. 7 of RAA
  - Committee of Estate
- **Non-financial:**
  - Representative (personal and health care decisions) – s. 7 and s. 9 of RAA
  - Committee of Person (personal and health care)
  - Temporary substitute decision maker (health care)

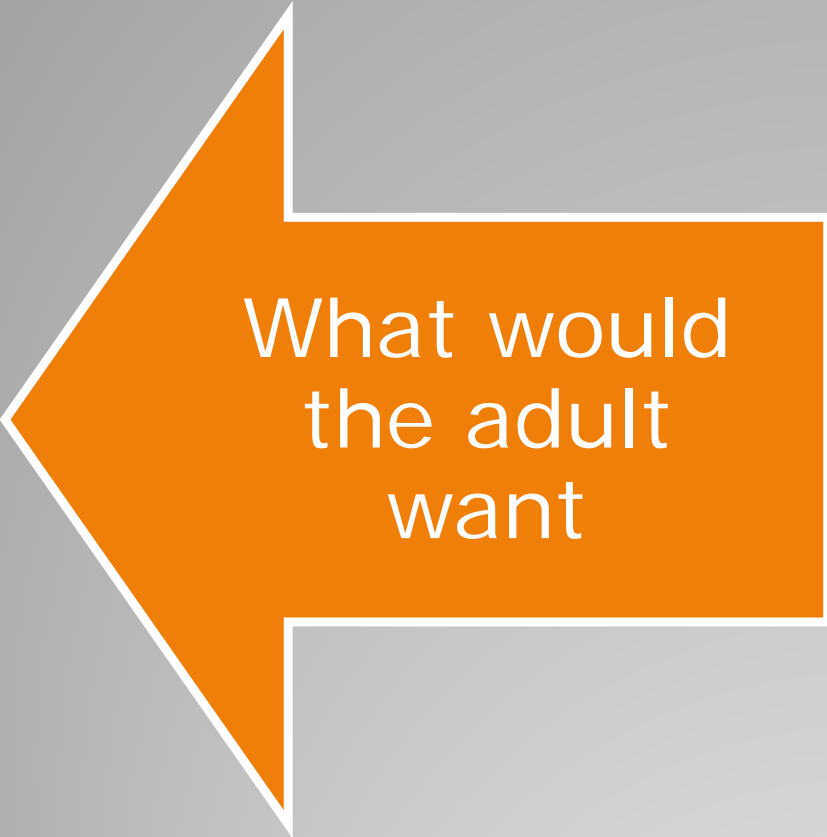
## **Substitute Decision Makers in BC**

## There are different types and different tests of capability, for example:

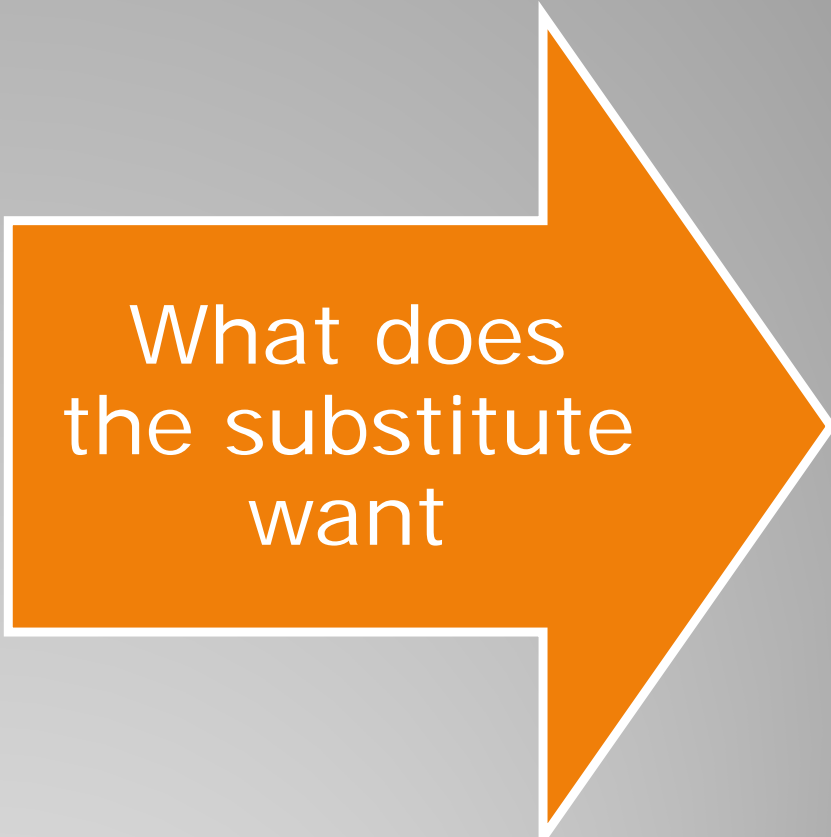
- To vote (substitution not possible in BC)
- To drive (MD to assess)
- To marry (very low test)
- To make a will (testamentary)
- To grant a Power of Attorney (test in *POAA*)
- To be able to contract, Rep 7 vs. Rep 9 agreements
- To manage financial and legal affairs (*AGA*, *PPA*)
- To refuse service under a Support and Assistance plan (*AGA*)
- To make health care decisions (*HCC...A*)
- To make health and personal care decisions (*PPA*, *RAA*)

**Capability is Decision-Specific**





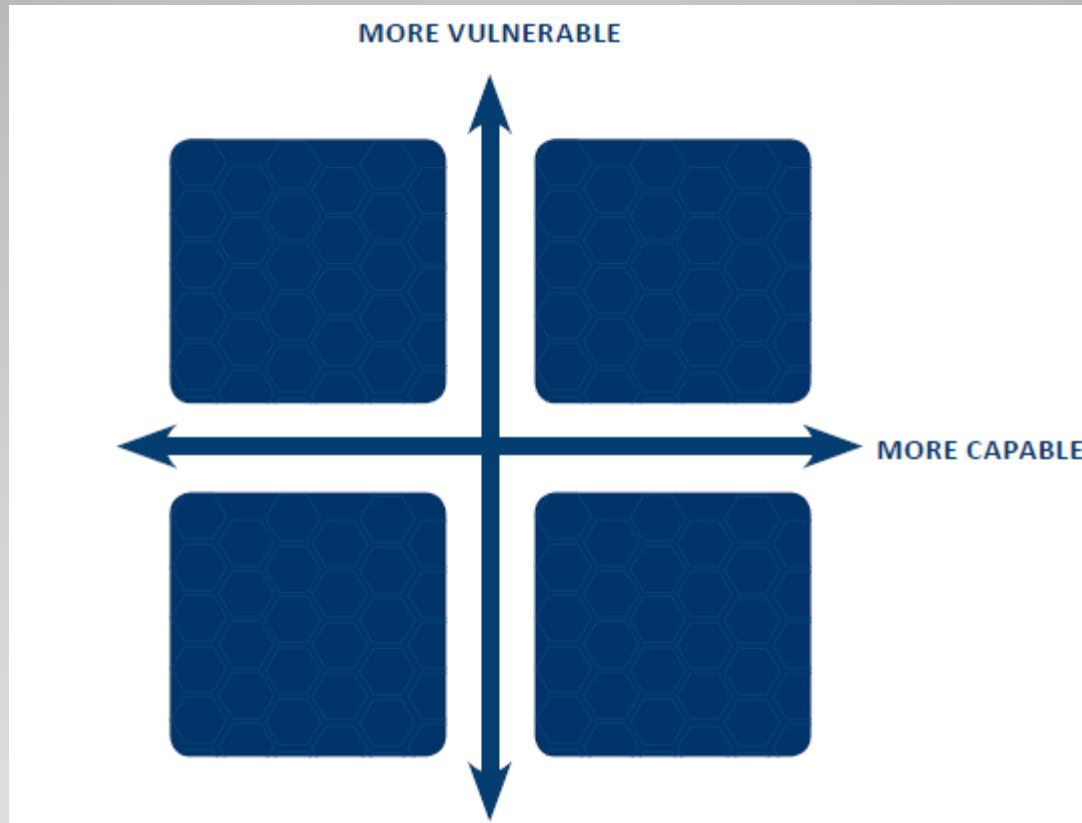
What would  
the adult  
want



What does  
the substitute  
want

**Standing in the shoes of another  
adult is challenging**

An adult's need for support or assistance will depend on the decisions required and the adult's circumstances



Source: BC Elder Abuse & Neglect Prevention Collaborative "Vulnerable Adults & Capability Issues in BC" Jan 2009 p.18

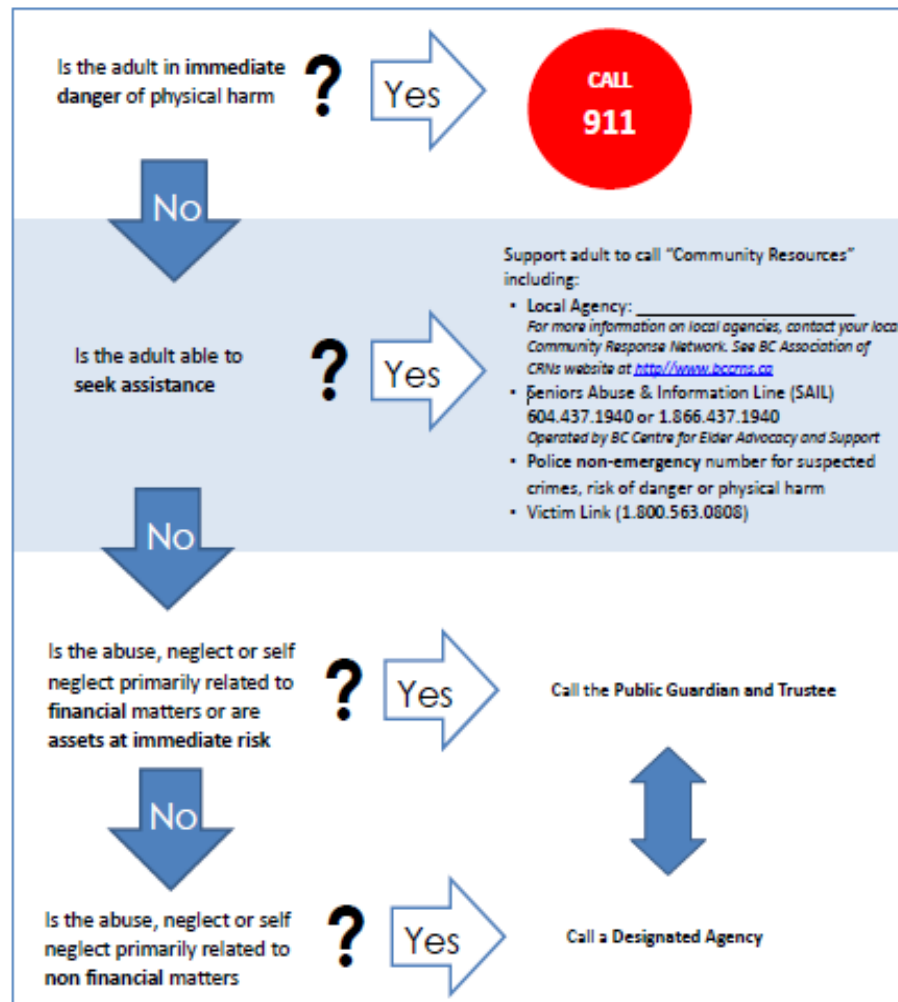
**Responses & Tools are Situation Specific  
and Depend on Vulnerability and Capability**

**While there is no "wrong" number to call, this tool helps health, social, financial and legal service providers know how to make the most effective referrals in the least number of phone calls**

**Decision Tree**

## How to Assist an Adult Who is Abused, Neglected or Self Neglecting: A Decision Tree for Effective Referrals for Adults in BC Who may be Vulnerable and/or Incapable

For an introductory video to the law in BC on responding to abuse and neglect, and for information on how to use this decision tree, visit [www.trustee.bc.ca/pages/video.aspx](http://www.trustee.bc.ca/pages/video.aspx) and see page 2 for information about calling the police, Designated Agencies and the Public Guardian and Trustee (PGT). For more information on Designated Agencies, the PGT, and Community Response Networks (CRNs) see the PGT publication *Protecting Adults from Abuse Neglect and Self Neglect* at <http://www.trustee.bc.ca>



What can you expect?	What can you expect?	What can you expect?
<p>You will be asked to provide information about the nature of your concern, the adult you feel is a victim and any possible suspect(s). You can expect that some basic information about yourself will also be requested.</p>	<p>You will be asked to provide information about the adult and the nature of your concern.</p>	<p>You will be asked to provide information about the nature of your concern, personal information about the adult and any decision maker.</p>
Actions May include:	Actions May include:	Actions May include:
<ul style="list-style-type: none"> <li>• Attending the location</li> <li>• Dispatching special units where available</li> <li>• Visiting adult, gathering information and evidence which may indicate a criminal offence such as: <ul style="list-style-type: none"> <li>○ assault, sexual assault,</li> <li>○ failure to provide necessities of life</li> <li>○ theft, theft by power of attorney</li> <li>○ fraud, forgery, extortion</li> </ul> </li> <li>• Liaising with Designated Agency and/or Public Guardian and Trustee as required</li> <li>• Assessing for adult's wellbeing</li> <li>• Considering peace bonds, no contact orders</li> <li>• Referring to community resources</li> <li>• Considering/recommending charges</li> </ul> <p style="text-align: center; font-size: 24pt; font-weight: bold;">Police</p>	<ul style="list-style-type: none"> <li>• Interviewing adult and others</li> <li>• Requesting information</li> <li>• Offering support and assistance (includes referral to community resources)</li> <li>• Liaising with Public Guardian and Trustee and/or police as required</li> <li>• Reporting suspected crimes to police</li> <li>• Exercising emergency powers to enter and remove adult to a safe place</li> <li>• Obtaining a restraining order</li> <li>• Obtaining a court order for support and assistance</li> </ul> <p style="text-align: center; font-size: 24pt; font-weight: bold;">Designated Agency</p>	<ul style="list-style-type: none"> <li>• Gathering additional information</li> <li>• Requesting account information from financial institutions and current decision makers (attorney, representative, trustee, committee)</li> <li>• Liaising with Designated Agency, community services, or police, as appropriate</li> <li>• If urgent risk to assets, exercising protective powers such as: <ul style="list-style-type: none"> <li>○ stopping withdrawals or sale of assets</li> <li>○ redirecting income for the adult's health or safety</li> </ul> </li> <li>• Looking for an appropriate decision maker. If none, and a decision maker is needed, consider obtaining authority as Committee of Estate, or in exceptional circumstances, Committee of Person.</li> </ul> <p style="text-align: center; font-size: 24pt; font-weight: bold;">Public Guardian and Trustee</p>

# Autonomy

# Protection

Self  
determination

Least  
intrusive

No one else

Incapability

Risk

To make a referral or for more information, please contact the  
Assessment and Investigation Services and Health Care  
Decisions Team:

Toll free PHONE: 1.877.511.4111

Local PHONE: 604.660.4507

Toll free FAX: 1.855.660.9479

Local FAX: 604.660.9479

Email [AIS-HCD@trustee.bc.ca](mailto:AIS-HCD@trustee.bc.ca)

See our website: [www.Trustee.bc.ca](http://www.Trustee.bc.ca).

**PGT Contact Information**