

YUKON

CANADA

ORDER-IN-COUNCIL 2012/ 22

ADULT PROTECTION AND
DECISION MAKING ACT
(SCHEDULE A OF THE
DECISION MAKING, SUPPORT AND
PROTECTION TO ADULTS ACT)

Pursuant to section 84 of the *Adult Protection and Decision Making Act* (Schedule A of the *Decision Making, Support and Protection to Adults Act*), the Commissioner in Executive Council orders as follows

1 The attached *Regulation to Amend the Adult Protection and Decision-Making Regulation* (O.I.C. 2005/78) is made.

2 The schedule entitled "Scale of Fees for Public Administrator" (C.O. 1970/014 under the *Judicature Act*) is repealed.

Dated at Whitehorse, Yukon,

29 March

2012.

YUKON

CANADA

DÉCRET 2012/22

LOI SUR LA PROTECTION DES
ADULTES ET LA PRISE DE DÉCISIONS
LES CONCERNANT (ANNEXE A DE LA
LOI SUR LA PRISE DE DÉCISIONS, LE
SOUTIEN ET LA PROTECTION DES
ADULTES)

Le commissaire en conseil exécutif, conformément à l'article 84 de la *Loi sur la protection des adultes et la prise de décisions les concernant* (Annexe A de la *Loi sur la prise de décisions, le soutien et la protection des adultes*), décrète :

1 Est établi le *Règlement modifiant le Règlement sur la protection des adultes et la prise de décisions les concernant* (Décret 2005/78) paraissant en annexe.

2 Est abrogée l'annexe intitulée « Tarif de l'administrateur public » (Décret 1970/014, établi en vertu de la *Loi sur l'organisation judiciaire*).

Fait à Whitehorse, au Yukon,

le 29 mars

2012.



Commissioner of Yukon/Commissaire du Yukon

ADULT PROTECTION AND
DECISION MAKING ACT
(SCHEDULE A OF THE
DECISION MAKING, SUPPORT AND
PROTECTION TO ADULTS ACT)

REGULATION TO AMEND THE
ADULT PROTECTION AND DECISION-MAKING
REGULATION

1 This Regulation amends the *Adult Protection and Decision-Making Regulation*.

2 Section 10 is repealed and replaced with the following

“10 An application for a guardianship order must

(a) unless paragraph (b) applies, be in Form 3 (Guardianship Application) in the schedule; or

(b) if the application is for temporary guardianship under section 35 of the Act, be in Form 3T (Temporary Guardianship Application) in the schedule.”

3 In paragraph 11(3)(b), the expression “an affidavit of service” is repealed and replaced with the expression “an affidavit of service, which may be in Form 9 (Affidavit of Service – Guardianship) in the schedule”.

4 Section 12 is repealed and replaced with the following

“12 An applicant for a temporary guardianship order under section 35 of the Act must file with the application

(a) an affidavit in Form 4T (Applicant’s Affidavit – Temporary Guardianship) in the schedule;

LOI SUR LA PROTECTION DES ADULTES ET LA
PRISE DE DÉCISIONS LES CONCERNANT
(ANNEXE A DE LA LOI SUR LA PRISE DE
DÉCISIONS, LE SOUTIEN ET LA PROTECTION
DES ADULTES)

RÈGLEMENT MODIFIANT LE RÈGLEMENT SUR
LA PROTECTION DES ADULTES ET LA PRISE DE
DÉCISIONS LES CONCERNANT

1 Le présent règlement modifie le *Règlement sur la protection des adultes et la prise de décisions les concernant*.

2 L’article 10 est abrogé et remplacé par ce qui suit :

« 10 La demande de tutelle est présentée :

a) sauf si l’alinéa b) s’applique, selon le formulaire 3 paraissant en annexe et intitulé Demande de tutelle;

b) s’il s’agit d’une demande de tutelle temporaire en vertu de l’article 35 de la Loi, selon le formulaire 3T paraissant en annexe et intitulé Demande de tutelle temporaire. »

3 L’alinéa 11(3)b) est abrogé et remplacé par ce qui suit :

« b) pour chaque personne qui doit recevoir signification d’une copie de la demande et de tout autre document en vertu du paragraphe 30(5) de la Loi, un affidavit de signification qui peut être selon le formulaire 9 paraissant à l’annexe (Affidavit de signification – Tutelle). »

4 L’article 12 est abrogé et remplacé par ce qui suit :

« 12 Dans le cadre d’une ordonnance de tutelle temporaire en vertu de l’article 35 de la Loi, le demandeur dépose avec la demande :

a) un affidavit selon le formulaire 4T paraissant en annexe, intitulé Affidavit du demandeur – tutelle temporaire;

(b) for each proposed temporary guardian, a statement in Form 5T (Statement of Proposed Temporary Guardian) in the schedule; and

(c) if the applicant has served on any person a document in respect of the application, an affidavit of service of the person, which may be in Form 9T (Affidavit of Service – Temporary Guardianship) in the schedule.”

5 The English version of paragraph 17(a) is repealed and replaced with the following

“(a) for funds received or disbursed, 2.5% of the amounts;”.

6 Forms 3T, 4T, 5T, 9, and 9T, as appended, are added in numerical order to the schedule to the Regulation.

b) pour chaque tuteur temporaire proposé, une déclaration selon le formulaire 5T paraissant en annexe, intitulé Déclaration du tuteur temporaire proposé;

c) si le demandeur a signifié à quiconque un document relatif à la demande, un affidavit de signification qui peut être selon le formulaire 9T paraissant en annexe et intitulé Affidavit de signification – Tutelle temporaire. »

5 La version anglaise de l’alinéa 17a) est abrogée et remplacée par ce qui suit :

« (a) for funds received or disbursed, 2.5% of the amounts; ».

6 L’annexe est modifiée par insertion, selon l’ordre numérique, des formulaires 3T, 4T, 5T, 9 et 9T paraissant en annexe.

S.C. No. _____

SUPREME COURT OF YUKON

PURSUANT TO THE *DECISION MAKING, SUPPORT AND PROTECTION TO ADULTS ACT*, S.Y. 2003, C.21 (the "Act"); specifically *SCHEDULE A, THE ADULT PROTECTION AND DECISION MAKING ACT, PART 3, COURT APPOINTED GUARDIANS* ("Part 3")

IN THE MATTER OF THE APPLICATION FOR TEMPORARY GUARDIANSHIP OF

(name of adult)
also known as, (if applicable)

TEMPORARY GUARDIANSHIP APPLICATION

Name of Applicant _____
(name of applicant who is asking to be appointed as principal guardian)

1. DATE AND LOCATION OF HEARING OF THIS APPLICATION

This application will be heard by a Justice of the Supreme Court of Yukon on,

_____ the _____, day of _____, at _____ a.m./p.m.,
(day of week) (day) (month) (year)

or so soon thereafter as may be heard, at the Law Courts, 2134 Second Avenue in the City of Whitehorse, in Yukon.

2. NOTICE TO PERSON(S) BEING SERVED

This is to notify you that if you or your lawyer does not attend before the court at the time and place shown above, the court may give the applicant(s) what they want in your absence.

Therefore, if you want to make representations at the hearing, you or your lawyer must attend in court on the date and time prescribed above.

3. APPLICATION

I am applying for an order appointing me to be the temporary guardian for the adult. (Check any of the following paragraphs that are applicable.)

- I am also applying to have the following person(s) appointed to act as temporary guardian(s) jointly with myself.

(name of proposed joint temporary guardian)

(name of proposed joint temporary guardian)

- I am also applying to have the following person(s) appointed to act as alternate temporary guardian(s). (Give particulars as to circumstances in which alternate temporary guardian is to act. Attach separate sheets if necessary.)

(name of proposed alternate temporary guardian)

(particulars)

(name of proposed alternate temporary guardian)

(particulars)

- My application requests the assignment of different financial powers to different temporary guardians, or it involves other terms or conditions for the exercise of the financial powers of different temporary guardians. (Give particulars for each temporary guardian under section 5 “Guardianship Powers Being Sought.”)

4. PERSONS TO BE SERVED

Although subsection 35(3) of the Act states that I am not required to serve any of the persons under subsection 30(5) with a copy of the temporary guardianship application, the Supreme Court of Yukon has indicated that it expects the application to be served on the adult who is the subject of the application, the Public Guardian and Trustee and the Adult Protection Unit of the Government of Yukon.

I am serving the following person(s) with my application:

- the adult who is the subject of this application
- the Public Guardian and Trustee
- the Department of Health and Social Services, Adult Protection Unit
- Other (specify) _____

5. TEMPORARY GUARDIANSHIP POWERS BEING SOUGHT

NOTE: The *Adult Protection and Decision Making Act* provides as follows:

37(1) The Supreme Court may give a temporary guardian only the authority that

(a) is necessary to make, or assist in making, decisions about the adult's affairs;

(b) will result in the most effective, but the least restrictive and intrusive, form of assistance and support for the adult; and

(c) is required to provide the care, assistance, and protection necessary to meet the adult's needs.

NOTE: The *Adult Protection and Decision Making Act* provides as follows:

35(8) Subject to this section, the other provisions of this Part apply to temporary guardians, except section 38(1).

I understand that by virtue of being appointed temporary guardian, I am **not** authorized to decide, obtain, make decisions about or make arrangements for any of the following items listed in section 38(1) of the Act in accordance with section 35(8) of the Act:

1. the adult's estate
2. the adult's living arrangements
3. the adult's social activities
4. the adult's employment ;
5. the adult's educational, vocational or other training ;
6. whether the adult should apply for any licence, permit, approval or other consent or authorization required by law that does not relate to the adult's estate
7. legal proceedings that do not relate to the adult's estate ;
8. in accordance with the *Care Consent Act*, the provision of care to the adult ;
9. the adult's daily living activities, including decisions about the adult's hygiene, diet and dress, social activities and companions ;

- 10. the restraint of the adult ;
- 11. the temporary care, education, and financial support of the adult's minor children, or any other persons who are cared for or supported by the adult ;
- 12. other (Give particulars. Attach separate sheets if necessary.)

I request that the following limitations, conditions or requirements apply to the authority requested: (Give particulars. Where separate limitations, conditions or requirements apply to different temporary guardians, state them separately for each temporary guardian. Attach separate sheets if necessary.)

- 1. _____
- 2. _____
- 3. _____

6. TEMPORARY GUARDIANSHIP PLAN

I am not required to file either a preliminary or subsequent guardianship plan when filing my application for a temporary guardianship order pursuant to section 35(2) of the Act. However, I understand that pursuant to section 35(10) of the Act, the court will provide me with direction with respect to when I need to file a temporary guardianship plan if my application is for more than 30 days in length.

7. COSTS

I am asking that the costs of the application be paid out of the adult's income or assets as follows: (Give particulars)

I am not asking for costs of the application at this time; however I may be required to do so at hearing of the temporary guardianship application.

8. LENGTH OF TEMPORARY GUARDIANSHIP ORDER

I understand that a temporary guardian may **not** be appointed for a period of more than 180 days in accordance with section 35(9) of the Act. I am asking that I be appointed as temporary guardian for _____ days.

(If asking for more than 30 days): In accordance with section 35(10) of the Act, I understand that the court will provide me with direction for compliance with section 30 of the Act, specifically, direction with respect to any documents required to be filed and served such as the report of the assessor (section 30(1)(a)), a statement by the

proposed guardian (section 30(1)(b)) and a guardianship plan (section 30(1)(c)) as well as direction with respect to service of this application on any other required individuals.

9. TEMPORARY GUARDIAN’S REMUNERATION

I am asking that the Court order that the temporary guardian(s) be remunerated from the adult’s income and assets as follows: (Give particulars)

I am not asking for remuneration from the adult’s income and assets.

10. TEMPORARY GUARDIAN’S EXPENSES

I am asking that the Court order that the temporary guardian(s) be reimbursed from the adult’s income and assets for reasonable expenses properly incurred in performing the duties or exercising the authority given under this application.

I am not asking to be reimbursed from the adult’s income and assets for reasonable expenses.

11. DOCUMENTS ACCOMPANYING THIS APPLICATION

1. Applicant’s Affidavit (Form 4T).
2. Statement of Proposed Temporary Guardian (Form 5T) for each proposed guardian. ;
3. Copy of each document in which the adult’s wishes respecting the choice of a guardian are expressed and attached to the Applicant’s Affidavit as an exhibit. ;

I will file an affidavit of service for each person I have served or are required to be served under section 4 of this application.

I am relying on the provisions of the *Adult Protection and Decision Making Act*, and its regulations in support of my application.

Date (day/month/year)

Applicant’s signature, or signature of Applicant’s lawyer

The address of the Supreme Court Registry is:

The Law Courts
2134 Second Avenue
Whitehorse, Y.T. Y1A 5H6

The APPLICANT'S address for delivery is:
(include physical address if address for delivery is a box number)

Fax Number for Delivery (if any) _____

The name and office address of the applicant's solicitor is: (if applicable)

S.C. No. _____

SUPREME COURT OF YUKON

PURSUANT TO THE *DECISION MAKING, SUPPORT AND PROTECTION TO ADULTS ACT*, S.Y. 2003, C.21 (the "Act"); specifically *SCHEDULE A, THE ADULT PROTECTION AND DECISION MAKING ACT, PART 3, COURT APPOINTED GUARDIANS* ("Part 3")

IN THE MATTER OF THE APPLICATION FOR TEMPORARY GUARDIANSHIP OF

(name of adult)
also known as, (if applicable)

TEMPORARY GUARDIANSHIP APPLICATION

Address

S.C. No. _____

SUPREME COURT OF YUKON

PURSUANT TO THE *DECISION MAKING, SUPPORT AND PROTECTION TO ADULTS ACT*, S.Y. 2003, C.21 (the "Act"); specifically *SCHEDULE A, THE ADULT PROTECTION AND DECISION MAKING ACT, PART 3, COURT APPOINTED GUARDIANS* ("Part 3")

IN THE MATTER OF THE APPLICATION FOR TEMPORARY GUARDIANSHIP OF

(name of adult)
also known as, (if applicable)

APPLICANT'S AFFIDAVIT

I, _____ of the City/Town/Village of _____ ,
(name)
in Yukon, MAKE OATH AND SAY, to the best of my knowledge, information and belief,
as follows:

1. The adult is incapable of managing some or all of their financial affairs as set out in the particulars in paragraph 4 of this Affidavit.
2. Some or all of the adult's financial affairs need to be managed by a temporary guardian as set out in the Statement of Proposed Temporary Guardian filed with my application.
3. The adult will benefit from the appointment of a temporary guardian.

4. In addition to the information in the other documents accompanying my application, the Court should be aware of the following: (Give particulars of any other information. Attach separate sheets if needed.)

5. Attached as Exhibit "A" is a copy of the written opinion of _____
(a medical practitioner or registered nurse).

NOTE: The Act states that an applicant for temporary guardianship need not file a report of an assessor as to the incapacity of the adult in question. However, the Supreme Court of Yukon has indicated that it expects the applicant to include with the application a written opinion from a medical practitioner or registered nurse.

SWORN before me at the City of _____)
_____,)
in Yukon on the _____ day)
_____,)
(month) (year))
_____)

A Notary Public in and for the Yukon Territory

Applicant's Signature

S.C. No. _____

SUPREME COURT OF YUKON

PURSUANT TO THE *DECISION MAKING, SUPPORT AND PROTECTION TO ADULTS ACT*, S.Y. 2003, C.21 (the "Act"); specifically *SCHEDULE A, THE ADULT PROTECTION AND DECISION MAKING ACT, PART 3, COURT APPOINTED GUARDIANS* ("Part 3")

IN THE MATTER OF THE APPLICATION FOR TEMPORARY GUARDIANSHIP OF

(name of adult)
also known as, (if applicable)

APPLICANT'S AFFIDAVIT

Address

S.C. No. _____

SUPREME COURT OF YUKON

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IN THE MATTER OF THE APPLICATION FOR TEMPORARY GUARDIANSHIP OF

(name of adult)
also known as, (if applicable)

STATEMENT OF PROPOSED TEMPORARY GUARDIAN

(to be filed by each proposed temporary guardian, including the Applicant)

I, _____, of the City/Town/Village of _____,
(name)

in Yukon, MAKE OATH AND SAY, to the best of my knowledge, information and belief, as follows:

1. I am nineteen (19) years of age or older and I am eligible to be appointed as a temporary guardian for the adult.
2. I am a suitable person to be a temporary guardian for the adult because: (Give particulars. Attach separate sheets if needed.)

3. I am not aware of any conflict of interest that presently exists, or will come into existence if I should be appointed.
4. I undertake, upon my appointment as temporary guardian to:
 - act honestly and in good faith;
 - exercise the care, diligence and skill of a reasonably prudent person;
 - act within the authority granted in the court order;
 - encourage and assist the adult to care for and make decisions about the adult, and to manage or participate in managing the adult's affairs; and
 - comply with the preliminary and any subsequent temporary guardianship plans.
5. In accordance with subsection 35(7) of the Act, I understand that without limiting section 37, a temporary guardian has authority to do anything that is necessary to preserve and protect the adult from financial damage or loss, including authority
 - a) to instruct any savings or financial institution where the adult has an account that no funds are to be withdrawn from the account until further notice;
 - b) to direct any source of the adult's income to send the income to an account that is the subject of an instruction under paragraph (a); and
 - c) to halt any disposition of the adult's real or personal property or to direct that the proceeds be paid into court.
6. In accordance with subsection 35(8) of the Act, the other provisions of this Part apply to temporary guardians, except subsection 38(1) of the Act.
7. In accordance with subsection 35(9) of the Act, I understand a temporary guardian may **not** be appointed for a period of more than 180 days.
8. In accordance with subsection 35(10) of the Act, I understand that despite subsections 35(2) and 35(3) of the Act, where the Court appoints a temporary guardian for a period of more than 30 days, the Court shall give directions for compliance with section 30, in particular paragraph 30(1)(a) and subsection 30(5) of the Act.
9. As temporary guardian, having authority for financial decision-making for the adult, I understand as follows:
 - in accordance with subsection 38(4) of the Act, I may **not**, without prior permission of the Supreme Court of Yukon, do the following:
 - dispose of the adult's business or real property;
 - grant or accept a lease of real or personal property on the adult's behalf for a period longer than 3 years;

- dispose of the adult’s personal property that is worth more than the amount prescribed by the regulations;
 - invest the adult’s assets in investments that a trustee is not authorized to make under the *Trustee Act*;
 - to give substitute consent on the adult’s behalf to the adoption of the adult’s child’;
 - to commence divorce proceedings on the adult’s behalf; and
 - to interfere with the adult’s religious practices.
- in accordance with subsection 43(3) of the Act, I must not dispose of property other than money that I know is subject to a specific testamentary gift in the adult’s will unless it is necessary to do so to comply with my duties as a temporary guardian;
 - in accordance with paragraph 45(1)(a) and 45(1)(b) of the Act, I am required to keep accounting records and to produce those records for inspection and copying at the request of the adult or the Public Guardian and Trustee;
 - in accordance with paragraph 45(1)(c) of the Act, I must, within six (6) months of being appointed as temporary guardian, file with the Court, an inventory and account of the adult’s assets and liabilities;
 - in accordance with paragraph 45(1)(d) of the Act, I must, upon the discovery of any asset or liability after the filing of the inventory and account, file with the Court an inventory and account of the asset or liability;
 - in accordance with paragraph 45(1)(e) of the Act, I must, keep the adult’s souvenirs and other personal effects at the disposal of the adult;
 - in accordance with paragraph 45(1)(f) of the Act, I must, keep the adult’s assets separate from the temporary guardian’s assets.

SWORN before me at the City of _____)
 _____ ,)
 in Yukon on the _____ day)
 _____)
 _____ , _____)
 (month) (year))
 _____)

 Proposed Temporary Guardian’s
 Signature

A Notary Public in and for the Yukon
 Territory

S.C. No. _____

SUPREME COURT OF YUKON

PURSUANT TO THE *DECISION MAKING, SUPPORT AND PROTECTION TO ADULTS ACT, S.Y. 2003, C.21* (the "Act"); specifically *SCHEDULE A, THE ADULT PROTECTION AND DECISION MAKING ACT, PART 3, COURT APPOINTED GUARDIANS* ("Part 3")

IN THE MATTER OF THE APPLICATION FOR TEMPORARY GUARDIANSHIP OF

_____ (name of adult)

also known as, (if applicable)

STATEMENT OF PROPOSED TEMPORARY GUARDIAN

Address

S.C. No: _____

SUPREME COURT OF YUKON

PURSUANT TO THE *DECISION MAKING, SUPPORT AND PROTECTION TO ADULTS ACT, S.Y. 2003, C.21* (the "Act"); specifically *SCHEDULE A, THE ADULT PROTECTION AND DECISION MAKING ACT, PART 3, COURT APPOINTED GUARDIANS* ("Part 3")

IN THE MATTER OF THE APPLICATION FOR GUARDIANSHIP OF

(name of adult)
also known as, (if applicable)

AFFIDAVIT OF SERVICE

I, _____, of _____, in Yukon,
MAKE OATH AND SAY AS FOLLOWS:

I personally SERVED:

(name of person served) _____

(date and time when person served) _____

(complete address where person served) _____

List of each document served

- | | |
|---|--|
| <input type="checkbox"/> Guardianship Application | <input type="checkbox"/> Application's Affidavit |
| <input type="checkbox"/> Incapability Assessment Report | <input type="checkbox"/> Preliminary Guardianship Plan |
| <input type="checkbox"/> Statement of Proposed Guardian | |

attached and marked as exhibits A, B, C, D and E.

SWORN before me at City of _____)

_____,)

in Yukon on the _____ day)

_____,)

(month) (year))

_____)

Signature

A Notary Public in and for the Yukon
Territory

S.C. No: _____

SUPREME COURT OF YUKON

PURSUANT TO THE *DECISION MAKING, SUPPORT AND PROTECTION TO ADULTS ACT*, S.Y. 2003, C.21 (the "Act"); specifically *SCHEDULE A, THE ADULT PROTECTION AND DECISION MAKING ACT, PART 3, COURT APPOINTED GUARDIANS* ("Part 3")

IN THE MATTER OF THE APPLICATION FOR GUARDIANSHIP OF

(name of adult)

also known as, (if applicable)

AFFIDAVIT OF SERVICE

S.C. No: _____

SUPREME COURT OF YUKON

PURSUANT TO THE *DECISION MAKING, SUPPORT AND PROTECTION TO ADULTS ACT, S.Y. 2003, C.21* (the "Act"); specifically *SCHEDULE A, THE ADULT PROTECTION AND DECISION MAKING ACT, PART 3, COURT APPOINTED GUARDIANS* ("Part 3")

IN THE MATTER OF THE APPLICATION FOR TEMPORARY GUARDIANSHIP OF

(name of adult)
also known as, (if applicable)

AFFIDAVIT OF SERVICE

I, _____, of _____, in Yukon, MAKE OATH AND SAY AS FOLLOWS:

I personally SERVED:

(name of person served) _____

(date and time when person served) _____

(complete address where person served) _____

List of each document served

- Temporary Guardianship Application
- Applicant's Affidavit for Temporary Guardianship
- Statement of Proposed Temporary Guardian

attached and marked as exhibits A, B and C.

SWORN before me at the City of _____)

_____,)

in Yukon on the _____ day)

_____,)

(month) (year))

_____)

Signature

A Notary Public in and for the Yukon Territory

S.C. No: _____

SUPREME COURT OF YUKON

PURSUANT TO THE *DECISION MAKING, SUPPORT AND PROTECTION TO ADULTS ACT*, S.Y. 2003, C.21 (the "Act"); specifically *SCHEDULE A, THE ADULT PROTECTION AND DECISION MAKING ACT, PART 3, COURT APPOINTED GUARDIANS* ("Part 3")

IN THE MATTER OF THE APPLICATION FOR TEMPORARY GUARDIANSHIP OF

(name of adult)

also known as, (if applicable)

AFFIDAVIT OF SERVICE
