

Legislative Review of the
Dependent Adults Act

"To meet the needs of adult Albertans now and into the future"

**Feedback
from the Detailed Questionnaire
for Stakeholders**

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INTRODUCTION

Alberta Seniors and Community Supports and Alberta Justice and Attorney General are pleased to present a summary of a questionnaire distributed to stakeholders during December 2005 and January 2006. The *Detailed Questionnaire for Stakeholders* is part of a larger consultation process to revise the *Dependent Adults Act*.

The goal of this survey was to ask the people who are involved with the Act on a daily basis how it could be improved. It focuses primarily on trusteeship issues. Input from stakeholders will help policy-makers suggest revision to the Act to ensure it meets the needs of adult Albertans now and in the future. It is anticipated that the revised Act will be introduced in the Alberta Legislature in the spring of 2007.

The *Detailed Questionnaire for Stakeholders* is an important element in the third phase of the consultation process. Phase three also includes 43 focus groups with stakeholders held in three communities across the province – Calgary, Red Deer and Edmonton – and through video conference for the communities of Lethbridge, Grande Prairie and Medicine Hat. In addition, stakeholders were invited to complete a general online questionnaire or make a written submission. Forty *Detailed Questionnaires for Stakeholders* were completed. In total, 457 Albertans participated in phase three of the consultation. Each contribution was examined in detail and played an important role in the overall legislative review process.

Phase 3 Consultation	Participants
43 stakeholder focus groups	318
General online questionnaire	88
Detailed online questionnaire*	40
Written submissions	11
Total	457

* Results are published in a separate report

The review has four phases:

Phase One: Public Survey

- In the spring of 2005, Albertans were invited to complete a survey to determine how the two Acts should be changed. More than 3500 people responded.

Phase Two: Community Consultations

- Open public meetings on the *Dependent Adults Act* and the *Personal Directives Act* were held in the fall of 2005. Approximately 300 people attended.

Phase Three: Stakeholder Consultations

- **Stakeholder Questionnaires:** In December 2005 and January 2006, Albertans who had some involvement or interest in the legislation were invited to complete questionnaires to comment on proposed changes and issues raised so far. The themes from the detailed questionnaire are presented in this report. A separate report entitled *Stakeholder Consultation Summary* features the results of the general questionnaire, the focus groups and the written submissions.

- **Stakeholder Focus Groups:** In January 2006, 43 focus groups were held with lawyers, service providers in the disability and mental health fields, health care and long term care professionals, trustees, guardians, Aboriginal groups and others to explore the issues from their unique perspective. The themes are presented in *Stakeholder Consultation Summary*.

Phase 4: Consultations with Dependent Adults and Self-advocates

- Ten focus groups will take place in February 2006 to gather input from dependent adults who have guardians and/or trustees (they may have private guardians/trustees, or the Office of the Public Guardian/Office of the Public Trustee may be their guardian/trustee) and self-advocates (persons with developmental disabilities who are speaking on their own for changes they would like to see). Sessions are scheduled for Wainwright, Edmonton, Red Deer, Calgary and Lethbridge. Catholic Social Services has been contracted to facilitate these focus group sessions. A report will be prepared in early March highlighting the results.

You can read the reports from all phases of the consultation at www.seniors.gov.ab.ca or at www.justice.gov.ab.ca.

ABOUT THIS DOCUMENT

Forty respondents either completed the online questionnaire or mailed in their responses. This document presents their responses. It does so by providing information about how the respondents answered specific propositions, and by setting out the respondents written comments.

Respondents' Responses to Specific Statements

The questionnaire invited stakeholders to respond to statements about how the *Dependent Adults Act* (or any legislation that replaces it) should deal with a variety of procedural and substantive issues in the future. Their input is presented in data tables throughout this document. The following is an example.

EXAMPLE

1. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion	
[Statement: Note 1]	17	16	7		Note 2
	43%	40%	18%		Note 3
	52%	48%			Note 4
					Note 5

Note 1 The left hand column sets out the statement to which respondents were responding.

Note 2 This row shows the number of responses in each of the three categories, “Agree”, “Do Not Agree”, or “Not Sure”.

Note 3 This row shows the percentage of responses in each of the three categories.

Note 4 This row shows the percentage of respondents in each of the “Agree” and “Do Not Agree” categories. The calculation excludes “Not Sure” responses.

Note 5 The percentages in each row may not add up to exactly 100%, because of rounding errors.

Respondents’ Written Comments

Respondents were invited to elaborate on their responses or make suggestions. Each data table is followed by the written comments. The following is an example:

RESPONDENTS’ COMMENTS

1. Need to account for current backlog in court system - with tribunal system there is always possibility that decision makers are biased, unknowledgeable, and are not concerned with one's best interest.

All written comments provided by respondents have been included in this document. Responses have been edited only where necessary for stylistic purposes (e.g., capitalization, spelling, expanding abbreviations) and to remove references that might identify the respondent, another individual or an organization.

Nature of Respondents’ Involvement

The online questionnaire invited respondents to indicate the nature of their involvement with or interest in the *Dependent Adults Act* by checking one or more categories. The following table indicates how respondents identified themselves. Since respondents could check more than one category, the total number in each category exceeds the total number of respondents to the questionnaire.

Category	Count	Percent
1. I am a private trustee.	7	11%
2. I am a private guardian.	6	10%
3. I have a family member or friend who is a dependent adult.	8	13%
4. I am a health care professional.	15	24%
5. I am a legal professional.	8	13%
6. I am a member of an organization that provides services to dependent adults.	11	18%
7. I am a member of an advocacy organization.	1	2%
8. I am an interested member of the public.	5	8%
9. Other	1	2%

1 COMMON ISSUES

1.1 Court or special-purpose tribunal?

2. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The current approach of the <i>Dependent Adults Act</i> , under which the Court of Queen’s Bench is the only body with general authority to appoint, supervise and remove substitute decision-makers for adults is satisfactory and should not be changed.	17 43% 52%	16 40% 48%	7 18%	
(b) Consideration should be given to creating a special-purpose tribunal that would perform most of the functions that are currently performed by the Court of Queens’ Bench under the <i>Dependent Adults Act</i> .	20 53% 63%	12 32% 38%	6 16%	

RESPONDENTS’ COMMENTS

1. Need to account for current backlog in court system - with tribunal system there is always possibility that decision makers are biased, unknowledgeable, and are not concerned with one's best interest.
2. Consideration should be given to having the Office of the Public Trustee handle annual supervision of the trustee, where there are no contentious matters, in order to reduce legal costs. Where contentious matters arise, the matter should be referred to the Court of Queen's Bench for resolution.
3. I can see the pros and cons of both positions. I would say the court should retain final authority in any case. A tribunal could work well or it could be cumbersome and frustrating depending on who is appointed to it.
4. Certainly improvements could be made without [... respondent did not complete this comment]
5. First time applications always through the court - all subsequent functions by a TRIBUNAL. DAA must empower the Tribunal to follow up all Reviews and to make it so they can refer the matter back to the OPT & OPG who must take the case to court for resolution.
6. The courts have plenty of work to do without guardianship/trustee application work. A well educated and cross-disciplinary tribunal can probably do this more time and cost effectively. I would favour Queen's Bench only to the extent that some extraneous complications should arise in the application.
7. A more pro-active, less formal approach to appointing guardians and trustees is needed.
8. There are discrepancies with time frame & accessibilities between private guardianship vs. public guardianship applications. Financial resourcefulness has a bearing on expediting guardianship application. If the family has no financial difficulties, hiring experienced lawyers also expedites the process. If the family member (applicant) is not bogged down by paperwork, and has high educational level that they can handle this process through the self-help avenue,

application time has not been too bad. Based on my observation, it seems easier for family members to get Guardianship Order for private guardianship appointment through the Court process. The Office of Public Guardian tends to deny certain applications, especially for the mentally ill patients who have non-compliance issues. Also, there is variation with different OPG representatives in terms of their diligence in processing an application in an expedient fashion. Other than individual differences in regard to their professional practices, there may be an issue of the nature or number of caseload they each have. This may be a resource problem, that if OPG has more staff, they may be able to process applications in a swifter manner. As it stands now, there is no official appeal protocol when OPG rejects public guardianship applications. I am not aware if each OPG has set standards for their staff re: time frame to process an application and if there is any monitoring to ensure adherence to those standards. Public guardianship or private guardianship applications may be faster if the proposed dependant adult is involved with the psychiatric or hospital system as outpatient clinic and hospital staff will complete Form 1, Functional Assessment "free of charge". However, the process may be longer and more expensive for the proposed dependent adult and families if they have to start from square one, i.e., trying to locate professionals to complete those forms. While the tribunal model is an interesting one, if the tribunal is not properly and sufficiently staffed, i.e., with people who understand the nature and challenges of individuals who suffer from various types of mental illnesses, the primary and secondary [effect] the illnesses have on the individuals and their families, I would be very hesitant to agree with their decision-making with granting guardianship and/or trusteeship applications. The needs of the mentally ill, especially those with major psychiatric disorders are unique, thus require trained people to review cases to make such important decisions as to whether they should or should not have guardian and/or trusteeship in place. As abovementioned, the reasons for lengthy processing of applications can be related to a range of factors unrelated to accessibility to Court services, e.g., social, financial affordability, educational level of applicants (usually the family), resource (availability and accessibility of professionals to conduct a meaningful, reliable assessment which is a big problem in rural areas), system policy/OPG standard of practices, quality of staff, motivation to shift guardianship responsibilities to families etc. Therefore, it is difficult to commit to agreeing with the tribunal idea unless all of the above factors are taken care of under the new system. Taking away someone's autonomy is a major issue, therefore, care and caution must be exercised in determining if the proposed dependent adult meets dependent adult's criteria. As well, only suitable, competent, willing, and committed guardians should be appointed for the vulnerable.

9. I disagree strongly [with arguments for court-only approach]. It is too costly to hire a lawyer to go before a judge. Also, I do not feel that a judge is qualified on the human level. These things should be done with a lawyer and a judge ONLY in firstly appointing a guardian or trustee and THEN – monitored in the community where the people are known.

Using a judge and lawyer should only be a one-time exercise to appoint trustee and guardianship. A tribunal of five respected community persons should subsequently be enough.

I strongly agree with this [tribunal] approach. Some people who could make up a tribunal should be – Pastor, doctor, psychologist, nurse, family members, lay persons, friends, accountants (for trusteeships), should be a must and mental health workers.

I strongly agree with a tribunal made up of people who are known to the person and the family and the guardian/trustee. They should be family, clergymen, doctors, psychologists, nurses, mental health workers and friends. These things should be handled and monitored at the

community level in which case I believe it would save a great deal of money, save time and stop abuse more quickly.

10. Appointment by court is fine. Reviewing of accounts every six years could be done by a tribunal or administrative office. These professionals could give the time and care needed to actually review accounts.

1.2 The distinction between guardianship and trusteeship

3. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The current approach of the <i>Dependent Adults Act</i> , in which there is a formal distinction between the position of guardian (personal matters) and trustee (property matters), is satisfactory and does not require significant modification.	21 55% 62%	13 34% 38%	4 11%	
(b) The <i>Dependent Adults Act</i> should create a single category of substitute decision-maker, who would have decision-making authority in any matters (personal or property), and only those matters over which the court considers it appropriate to grant them authority.	18 50% 55%	15 42% 45%	3 8%	

RESPONDENTS' COMMENTS

1. When money is involved health care decisions are often forgotten or are neglected and the person's best interests are not met.
2. As a professional working with individuals suffering from cognitive impairment, decision making regardless of personal or property is always based on that individual's best interest and quality of life. All decisions should be based on sound principle so there really is no need for two competing bodies
3. Some of those appointed as guardians make wise decisions regarding care, housing choices, but may not always be able to manage the financial end of things.
4. The present system is far too cumbersome both to encourage family based guardians to become involved and for those assisting them in the application process. I think it is little wonder that many family members shy away from involvement in guardianship because of the unnecessarily complicated nature and separation between two agencies that are meant to provide the same function - alternative decision making for those unable to do so.
5. Mental illness afflicts individuals in different ways. Even the same diagnosis may be manifested in different ways for different individuals. Illness may vary in terms of the type, subtype, range and scope of symptoms, different effects on their varying areas of social functioning depending on the intensity and severity of symptoms. Some people may need either guardianship or trusteeship in place, but not both. When the same family member acts as the guardian and trustee at the same time, there are pros and cons to such arrangements. While it may be more practical and convenient for the same person to be the guardian and trustee at the same time, there is less check and balance with such arrangements. For people who have public guardian and public trustee in place, there is definitely some interdependence between the 2 roles

in managing, say a mentally ill individual in the community. It does require ongoing communication, co-operation and co-ordination to make it work. There is less opportunity for abuse when there are checks and balance, auditing policies already in place.

6. I am guardian and trustee for both my husband and son. You cannot distinguish between the two because the decisions made for one thing often overlaps the other. It would be very confusing to have them separated. One example – the decision about a holiday (what kind, how long etc) depends entirely on the funds available. Also, all decisions about community involvement and activities must be balanced out with funds available.

7. If one person qualifies or is designated by the maker, then the two positions of responsibility could be combined.

8. Both need to be specific. Trusteeship requires special skills. Many appointees lack skills in both. Understandably – best is to require one for both with alternate appointed early – for consultation – and emergent need.

1.3 Separate or combined offices of Public Guardian and Public Trustee

4. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The current structure, in which separate offices (Public Guardian and Public Trustee) perform the government’s functions in guardianship and trusteeship matters, is satisfactory and does not require significant modification.	10 27% 31%	22 59% 69%	5 14%	
(b) A single government office should perform the functions that are currently divided between the Public Guardian and the Public Trustee under the <i>Dependent Adults Act</i> .	24 69% 77%	7 20% 23%	4 11%	

RESPONDENTS’ COMMENTS

1. The single office works well in 3 or 4 other provinces and should be considered for many reasons including fiscal responsibility.
2. I think that the functions are distinct enough to warrant separate offices under different departments.
3. Combined offices but separate the functions by policy or clarify the procedure to resolve conflict over precedence - ie - which decision is governed more by guardian or trustee.
4. See previous commentary [Comment 4, Question 2]. I think it is particularly ridiculous for those who have to manage little or no estate ie; AISH recipients or OAS, GIS recipients.
5. Both guardian and trustee should be under Justice and the two offices should be adjacent to each other, in the same building and work closely together but should not be combined.
6. The skills to be a competent trustee may not be the same as a competent guardian. While a single government office performing both functions seems attractive to cut down levels of bureaucracy, still, people hired assigned for guardianship role and trusteeship role should be

distinct to fulfill those very different duties/roles in a competent fashion. E.g., making consent to treatment decisions is a very different process, requiring knowledge about the illness, treatment options, than making competent financial decisions for investment or sale of the dependant adults' farm land.

7. Because the guardian and trustee decisions overlap so much there would not be so much confusion. This would greatly benefit the clients in their programs, holidays and daily activities. I don't see how it can benefit the client and most certainly not make the co-ordination easy for the trustee/guardians to have the two separated. I also believe it would be much easier to monitor.

8. Combination of the two functions is okay if all the safeguards are left in place.

9. Combining office space could be beneficial, but combining functions wouldn't be a good idea.

10. One Act governs both. Less bureaucracy if one office – three sections – guardians, trusteeship and guardian/trustee – 1 appointed.

1.4 Getting and protecting Information

5. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The provisions of the <i>Dependent Adults Act</i> (and other relevant legislation) relating to access to and protection of information relating to adults who are the subject of proceedings under that <i>Act</i> are satisfactory and do not require substantial modification.	6 18% 25%	18 53% 75%	10 29%	
(b) The <i>Dependent Adults Act</i> should				
(1) provide a mechanism for someone who is applying for the appointment of a substitute decision-maker to get information (e.g. financial records) that may be relevant to the application	25 66% 86%	4 11% 14%	9 24%	
(2) specify who may examine the contents of court files relating to dependent adult matters	32 84% 91%	3 8% 9%	3 8%	
(3) restrict the publication of information identifying someone as the subject of proceedings under the <i>Act</i> or that otherwise describes proceedings under the <i>Act</i>	21 58% 81%	5 14% 19%	10 28%	
(4) impose specific restrictions and duties on all guardians and trustees relating to the use, disclosure, protection and destruction of records and that they acquire in connection with their duties	29 76% 85%	5 13% 15%	4 11%	
(5) provide for a public register of specified information relating to the appointment of substitute decision-makers that would allow third persons to determine whether an adult has a trustee or guardian and the scope of the trustee's or guardian's authority	28 74% 88%	4 11% 13%	6 16%	

RESPONDENTS' COMMENTS

1. A register, but not a public one
2. Allow professional medical providers and those who would approve additional adults to come under the care of a particular individual
3. Although a public register that would allow third persons to determine whether a particular adult has a trustee or guardian would be beneficial to health care providers and others with a genuine interest in the welfare of the adult, it would also open the doors to individuals with dishonest or malicious intentions to identify compromised individuals in their communities as a means to target them for scams, etc. Additionally, some adults with a guardian or trustee may feel it a breach of their privacy to allow any interested party to access such a public register. If there were a reasonable way to remedy these two concerns, then I would support the idea of a public register. Perhaps persons making an inquiry into the register would be required to give their full name, reason for the request of information, and contact information. Also persons with a legitimate need to know should be allowed to access this type of register.
4. Specifically, hospitals, police agencies, community agencies and health services should have a way to determine whether a particular adult has a guardian. As well, I think that service providers should be able to verify this information as well. I have been in a situation where a service provider has taken advantage of their clients by keeping an account open with a utility company while the client was no longer in their care. The client therefore has an open account and is totally unaware of this. I also had the experience that a service provider had my independent adult son open an account with a utility company without consulting me as his guardian. Another thought...while my son was "on the street" off and on, and I was trying to locate him...I had to personally ask the police department and the local hospitals to make a note on their files that my son has a guardian...just in case he had any involvement with these agencies. Had there been a data base that could have been checked...or somehow is automatically linked or flagged...that would be a great relief to some guardians.
5. Perhaps the public trustees role is to collect the relevant information on the dependant adult and act as a filter to provide enough general information to the proposed alternate decision-maker to help them decide whether they can actually manage the estate or what they may have to do to gather the expertise for them to do so. It would be important to protect the dependent adult from a "let's see what they've got" mentality that some proposed trustees may be most motivated by. Once someone is in agreement and can manage the estate then the full details of the account should be turned over.
6. Individual confidentiality needs to be protected but right now, forms and information are sent directly to an individual already deemed incompetent and that information is not always protected from other persons reading these forms & information. A demented person will leave forms in the open where anyone can see them. We recognize that an individual must be given the information / forms but should there not be something in place to help them secure the information if they need that assistance?
7. There is far too much secrecy and not nearly enough public information regarding guardians and trustees. If I am concerned about the well-being of any person, it should be easy for me to access a public register to ascertain if that person has a guardian and, if so, contact information for the guardian.

8. Just a quick comment about the *Mental Health Act*. Whereas the existing *Mental Health Act* 28(1) has provisions to allow OPG to act as the decision-maker of last resort for TREATMENT for a certified patient who may be floridly psychotic, this Act does not have clear provision to allow hospital social workers to disclose information to involved service providers or government financial benefit workers, AISH workers when the patient may be too psychotic to provide written consent to release or to collect information on their behalf to address their social, financial issues. Although the *Health Information Act* has spelt out the conditions in which we can release information to these people, the AISH Office has now denied information as basic as who are these patients. AISH worker using *Freedom of Information and Protection of Privacy Act* as their reasons to [not] release this information. At the same time, we have to help the patient to avoid overpayment and need to communicate with patient's AISH worker when they may not be able to give us informed consent to release or to collect this social information on their behalf. Applying for guardianship for these patients who are suffering episodic psychosis and who may respond well to their medications (but not immediately) would not be appropriate. In short, there are gaps in existing legislations to deal with prudent release and collection of social /financial information for people who are temporarily psychotic but do not need legal guardianship nor legal trusteeship in place.

9. Trustees should not destroy records – all decisions by the agent should be open to a third party/parties. If abuse is suspected it should be held accountable by way of inspections by a tribunal periodically.

2 ISSUES RELATING MAINLY TO TRUSTEESHIP

2.1 Substitute decision-making without court authority

2.1.1 Self-appointed decision-makers

6. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The current approach of the <i>Dependent Adults Act</i> to decision-making by self-appointed actors – silence – is appropriate and should not be changed.	6 18% 22%	21 62% 78%	7 21%	
(b) The <i>Dependent Adults Act</i> should validate decisions taken by self-appointed actors in relation to the property of an adult with impaired decision-making, if the actor has acted with the belief that the decision is in the adult's best interest.	21 60% 75%	7 20% 25%	7 20%	

RESPONDENTS' COMMENTS

1. In the situation that a concerned person uses their own resources to provide for an adult after a trusteeship order has been submitted but before a trustee has been appointed by the court, the individual at their discretion should submit a record of their expenditure to the trustee once appointed, at which time the trustee will repay the individual or not at the trustee's discretion. I am not sure how this could be handled in the case that the person making the expenditure on behalf of the adult is the same person who is later appointed as trustee. Furthermore, I do not

think acting in good faith is enough if an individual uses a dependent adult's own resources prior to a court order. The expenses in this case should also be judged to be reasonable and necessary. The above represents my opinion only.

2. The only situation where this might be appropriate would be in "urgent" situations, but as a rule I find that the present system works well. Many families find informal ways of handling estate matters without much difficulty.

3. I think for clarity and transparency purposes, self-appointed decision makers should at the least be registered as such and be accountable for the expenditures at least annually to the tribunal or other interested and named parties in the dependent adult's sphere of influence. There needs to be some measure to ensure that self appointed does not get confused with self interested.

4. How would it be determined that the person was acting in the adult's best interest?

5. This would leave a lot of room for abuse if there is no mechanism in place to ensure no conflict of interests.

6. In my son's case, I'm legal guardian and trustee and I'm my husband's guardian and trustee. By his appointment with both, me and my daughter were appointed by them. I keep all bills and transactions to prove the expenditures for them.

7. Part of deciding whether the third person acted prudently and honestly should include minimal impairment and length of time. For example, were there other alternatives? How long did this third person act in a self-appointed manner without seeking a formal appointment?

8. Monitor through reporting and audit.

2.1.2 Access to funds in accounts

7. Please indicate whether or not you agree with the following statement.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The <i>Dependent Adults Act</i> should provide an informal procedure, with appropriate safeguards, whereby a family member of an adult with diminished decision-making ability may be authorized to deal with funds of the adult in an account.	25 64% 68%	12 31% 32%	2 5%	

1. As long as those safeguards are clear and enforceable. There is enough financial abuse already and this might make it even easier for people to be taken advantage of.

2. With the appropriate safeguards in place, I am not convinced that this would be any more efficient than the current process of appointing a trustee.

3. Again, I'm not sure this is necessary as I haven't run into any difficulties in my years in health care.

4. Simplify and rationalize the guardian and trustee departments, offer less complicated processes and especially with minimal estates and where there is general family agreement and support, streamline the appointment process. Perhaps the establishment of a separate account that is used for daily budget items might be reasonable.

5. A formal procedure should be required.
6. Informal procedure leaves lots of room for abuse.
7. This would need to be closely monitored and mechanisms put in place to ensure accountability
8. My daughter and family and I are the principal caregivers for both for everyday issues, even though they are both in different facilities – son in group home in the city and one in another facility here in town. However, to do this there must be strict safeguards or there would be a good opportunity for abuse.
9. No, there is too much chance of financial abuse.
10. But not on a long-term basis and only for emergencies.
11. Monitor for security of funds and guard against abuse.

2.1.3 Certificates of incapacity

8. Please indicate whether or not you agree with the following statements.		Agree	Do Not Agree	Not Sure	No Opinion
(a) The provisions of the <i>Dependent Adults Act</i> regarding certificates of incapacity					
(1) are satisfactory and do not require significant modification		11 31% 39%	17 47% 61%	8 22%	
(2) are wholly unsatisfactory because only a court should have the authority to determine that an adult requires a trustee		7 19% 24%	22 59% 76%	8 22%	
(3) should provide procedural safeguards (e.g. prior notice to the adult and family members) that apply <i>before</i> the Public Trustee is appointed as an adult's trustee		29 76% 81%	7 18% 19%	2 5%	
(4) should provide that the appointment of a trustee under a certificate expires automatically within a predetermined period (e.g. 30 days) unless it is reviewed and confirmed by an appeal panel or by a court		23 62% 68%	11 30% 32%	3 8%	
(5) should allow a trustee to be appointed for an adult who is <i>not</i> a resident of a facility		24 65% 75%	8 22% 25%	5 14%	
(6) should provide a mechanism for e.g. a spouse or other family member to replace the Public Trustee as an adult's trustee after the Public Trustee has been appointed by a certificate		24 67% 83%	5 14% 17%	7 19%	

RESPONDENTS' COMMENTS

1. There are too many different circumstances for one rule to apply to all. There are many degrees of capacity to be considered.

2. The spouse or family member should be subject to the same scrutiny as if they were making an original application
3. I strongly believe that the "family" is the best source of support/decision making for each other...however...I also realize that not all families have the "best interest" for each other. However, we must not begin to rely on Government agencies to be the surrogate family.
4. My experience is that this system has worked well; however I would agree that someone should be able to replace the Public Trustee under similar conditions as the Ontario legislation.
5. Having a trained assessor with specific expertise in determining the biopsychosocial nature of incapacity residing in the guardian's office would provide province wide coverage and be able to include elements beyond strict organic brain dysfunction - i.e. limited insight & judgement, psychiatric diagnoses, inappropriate social conditions all of which need to be factored in determining one's capacity.
6. My experience has been that the Public Trustee does an excellent job of managing finances for dependent persons. People should be encouraged to use this excellent service for their loved ones and to request the service for themselves should they become incapacitated.
7. This provision has been the most proficient, efficient, cost effective way for public trusteeship appointment for mentally incompetent mentally ill adults. This procedure actually requires 2 independent assessments by doctors versus just one assessment by a doctor or psychologist. The existing required biyearly review period is shorter, therefore tighter when compared to 6 yrs. required review duration in most guardianship / trusteeship orders through the Court process to ensure validity of continuation of public trusteeship.
8. I believe that the certificate is a tool which must remain in place in order to protect the mentally ill who are not able to deal with their financial matters and are often disenfranchised as a result. This must remain in place for individuals who are mentally ill who meet the financial incapacity criteria. Using this avenue is the last resort and is never a decision made in haste but after much discussion and consideration.
9. I went to a meeting of incapacity for my son while in a facility where they made comments about his mental incapacity and bad behaviour to him. These comments were dehumanizing and inexcusable. He understood what they said. He was oxygen deprived at birth – it was not his fault or mine!
10. Certificate clients are a problem. It wouldn't be prudent to require OPT or others to continue to prove the incapacity because once those clients are out of a facility they aren't going to submit themselves to examination. Perhaps certificates should be replaced by Court Order within the first two years.
11. Re (5): In case of alcohol or drug addiction. Re(6): Why was Public Trustee appointed? If no one willing to accept responsibility – no . If relative too far away returns to area, it is considered. Circumstances impact.

2.2 Criteria for deciding whether trusteeship is appropriate

2.2.1 Diminished decision-making capacity

9. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The <i>Dependent Adults Act</i> 's current test of incapacity regarding property matters – unable to make reasonable judgments in respect of matters relating to all or any part of the person's estate – is satisfactory and does not require significant modification or elaboration.	17 46% 59%	12 32% 41%	8 22%	
(b) The <i>Dependent Adults Act</i> should set out criteria for determining incapacity that are more specific than the current test.	18 49% 60%	12 32% 40%	7 19%	
(c) The <i>Dependent Adults Act</i> should specify matters or circumstances that do not in themselves provide grounds for a finding of incapacity.	21 58% 68%	10 28% 32%	5 14%	

RESPONDENTS' COMMENTS

- Judgment and insight are key in this area and should be looked at more closely.
- When working with individuals with cognitive impairment, we understand that these persons may have fluctuating levels of neurotransmitters which will effect their daily performance in activities of daily living. Example: people with Alzheimer's have periods of time where the recall of information is much better than other times or days.
- Working well and not in need of changes.
- The difficulty with the current legislation is the rather subjective nature that is open to multiple interpretations and thus creates conflict between health care providers and dependant adult department bureaucrats when it comes to making the judgment call about the need for an alternative decision maker. The criteria needs to be developed in concert with medical, psychological and social work professionals that once criteria are established, the decision for guardianship and trusteeship becomes next to automatic.
- If there is any doubt about the person's capacity for managing their own finances, the Public Trustee should be proactive in taking on the responsibility.
- Office of Public Trustee has tried to block the implementation of Certificate of Incapacity by creating internal practices that are not true to the spirit of the *Dependent Adults Act*, e.g., stating the proposed dependent adult does not have substantial "estate" to warrant public trusteeship. The spirit of the *Dependent Adults Act* is not about the size of the estate of the vulnerable person with diminished/diminishing capacities. Rather, for whatever reasons (mental handicap/ mental illness/ brain injury etc.) that they can no longer manage their finances or make reasonable judgments to meet their basic necessities, hence legal trusteeship is warranted. The consequences to these low income dependent adults if their finances are not being managed, i.e., to ensure basic necessities are paid for is far greater than someone who has lots of wealth and can afford to spend their money in frivolous manner - the former may become homeless and get more ill while the latter may still be able to function reasonably well.

7. I believe family members should be included in the decisions of a person’s incapacity and the testers should have more relevant facts. The Act should take into account that an adult may make good decisions WITH GUIDANCE!

8. This would be as beneficial to trustees as it is to clients. I think the courts are probably pretty good at making decisions regarding trusteeship but the vagueness of the legislative test leaves the process too open to unwarranted scrutiny.

9. If incapable of acting responsibly – paying bills – understanding consequences.

2.2.2 In need of a trustee

10. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The provisions of the <i>Dependent Adults Act</i> that require consideration of the need for a trustee when the court is deciding whether to appoint a trustee are satisfactory and do not require substantial modification.	11 31% 39%	17 49% 61%	7 20%	
(b) The <i>Dependent Adults Act</i> should provide more guidance regarding the criteria for determining whether an adult is in need of a trustee.	22 67% 81%	5 15% 19%	6 18%	

RESPONDENTS’ COMMENTS

1. Long Term Care situations need to be addressed in this area.
2. E.g. - vulnerable and at risk.
3. See above [Comment 4, Question 8].
4. All people who receive AISH should be strongly encouraged to use the valuable service of the Public Trustee. Those who have minimal assets and AISH as their only income are those most in need of the services of the Public Trustee.
5. My main concern is lack of screening or simple mechanism to decide if appointed private trustee is suitable, competent and will exercise those responsibilities with the best interest of the dependent adult in mind. For those dependent adults who have both guardian and trustee in place, and if they have different guardian and trustee appointed, if the legal guardian does not agree or support the legal trustee's decision, vice versa, what is the resolution protocol to resolve problems? This need clarification and effective problem resolution process.
6. In many cases of AISH or limited resources a family or friend could be appointed to assist the adult with decisions, or in some cases, make all decisions if a tribunal, not the courts, find that he needs a trustee and guardian.

7. Have not dealt with an AISH person.

2.2.3 Best interest

11. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The provisions of the <i>Dependent Adults Act</i> that describe the role of the adult's best interest when the court is deciding whether to appoint a trustee are satisfactory and do not require significant modification.	15 39% 50%	15 39% 50%	8 21%	
(b) The <i>Dependent Adults Act</i> should provide guidance as to matters that the court should consider when deciding whether it is in the adult's best interest to appoint a trustee.	22 63% 79%	6 17% 21%	7 20%	

RESPONDENTS' COMMENTS

1. The case law will set out the criteria

2. The court should mandate assessment criteria and/or reports required that would provide a robust examination of the dependent adult's biopsychosocial determinants of incapacity and subsequent need for a surrogate decision maker. Best interest would suggest that poor insight, judgement, intellect or physical and mental infirmity would be sufficient to suggest the surrogate is required. The court may want to ascribe degrees of authority as per ongoing assessment by health care professionals.

3. There may be benefit to provide general principles as to what "best interests" mean as it will no doubt be affected by values, beliefs of the appointed guardians/trustees/service providers/hospital or health care professional involved with the dependant adults.

4. I know three adults who desperately need a trustee (all three family members would act) but in all cases they refuse and in one case they are causing the family financial ruin. Now, how do you justify that when they are allowed to do this?

5. It puts trustees in a bad position to be appointed to help someone who is non-compliant. Trustees cannot control their behaviour and the dependent adult can create a terrible mess that can ultimately be blamed on the trustee.

2.2.4 Less intrusive or restrictive alternatives

12. Please indicate whether or not you agree with the following statement.	Agree	Do Not Agree	Not Sure	No Opinion
The <i>Dependent Adults Act</i> should state that a trustee must not be appointed unless the court is satisfied that less intrusive methods of assisting the adult are unlikely to be effective.	21 54% 64%	12 31% 36%	6 15%	

RESPONDENTS' COMMENTS

1. The danger of using less intrusive methods is there is no protection against abuse and no way of monitoring the person who is managing the money
2. Informal trusteeship usually works well, but when banks or property are involved something more is needed.
3. But some criteria need to be discussed around the business of intrusiveness because as it stands, someone needs to be dangerously disordered before any engagement from the system is invited.
4. Rather than "less intrusive" or "less restrictive" alternatives, the court needs to look for the "most helpful" alternative and the appointment of the Public Trustee is, in most cases, the most appropriate way of assisting people who lack the capacity to manage their own finances.
5. The central focus should be whether or not the person has the cognitive capacity to make financial decisions. Such proposed provision will slow down appointment and will be costly to the dependent adults in the short or long run. The sooner the trustee is appointed, the better they can act on the behalf of the dependant adult to prevent financial matters getting worst. Such expedient practices may very well contribute to managing other aspects of managing the dependent adult's physical, social and mental functioning. E.g., room and board being paid for which prevents the person becoming homeless.
6. We must remember to be sure that the decisions we make are thoroughly researched. These are people's lives you are making decisions for and too much Government interference is not always good.
7. It is arguable that these other forms of intervention are less intrusive to the dependent adult.

2.2.5 Assisted decision making

13. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The current approach of the <i>Dependent Adults Act</i> to <i>assisted</i> decision-making (in contrast to substitute decision-making) in property matters – silence – is appropriate.	10 29% 40%	15 43% 60%	10 29%	

(b) Before appointing a trustee for an adult, the <i>Dependent Adults Act</i> should require the court to be satisfied that the adult could not make the relevant decisions even with the assistance of a support network.	19 51% 59%	13 35% 41%	5 14%	
(c) The <i>Dependent Adults Act</i> should authorize the court to appoint a co-decision-maker, who would have shared authority with the adult for making decisions regarding property matters.	17 46% 59%	12 32% 41%	8 22%	

RESPONDENTS' COMMENTS

1. The problem with working with impaired seniors is that they can seem like they know what they want or they can be influenced by family members or others. Thus the senior ends up making a decision with the help of an assistant that they would never have made when their thinking was clear.
2. The co-decision-maker should be a second family member...not a Government Agency.
3. Co-decision maker could easily become manipulator or convincer. The court may wish to predetermine specific areas of decision making assistance required as part of the assessment but essential one is either capable or at risk.
4. It is best to have one person, a competent person, to have the decision-making authority. That person does have a responsibility to consult with the dependent adult and with other relatives when appropriate but only ONE competent person must have that decision-making authority.
5. Some mentally ill people have no support network, they might have alienated their family members due to symptoms of their illness. If one has to provide they could not make relevant decisions even with the assistance of a support network, this will slow down the appointment process and may precipitate more negative consequences than if the appointment is made in an expedient manner.
6. The decision to make application is done after much assessment and thought and should not be second-guessed by the court. And what if the above options listed fail, who then takes responsibility for the decision made, especially when it negatively impacts the dependent person?
7. Except the degree that an adult needs a decision-maker, it should be decided by their peers, a tribunal, who knows the adult and the decision maker or co-decision-maker. All circumstances should enter into it.
8. Consultation is good, only if welcomed.

2.3 The process for appointing a substitute decision-maker

2.3.1 Application regarding minor nearing the age of 18 years

14. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The provisions of the <i>Dependent Adults Act</i> that allow the court to appoint a guardian or trustee only for someone who is an adult at the time of the hearing are satisfactory and do not require significant modification.	5 14% 17%	25 68% 83%	7 19%	
(b) The <i>Dependent Adults Act</i> should allow the court, in appropriate circumstances, to appoint a guardian or trustee for a person who is close to but has not yet reached the age of 18 years, by an order that will come into effect only when the person reaches the age of 18 years.	21 57% 72%	8 22% 28%	8 22%	

RESPONDENTS' COMMENTS

1. So a 14 year old can consent to sex and a 16 year can consent to birth control &/or abortion, but must be covered by this act until 18?
2. Regarding the second point, I think that there should be an age marker at which such an application could go forward- e.g. 16 or 17 years of age.
3. Parents may be tempted to dip into their child's estate in times of financial hardship, as has happened time and time again with child actors.
4. We should also enable guardians of children (birth to 18) to appoint the Public Guardian as alternate and to access the services of the Public Trustee for their son or daughter if they so wish.
5. There are services, legal gaps for kids of 16 and up that need similar protection of guardianship and trusteeship when the current *Child Welfare Act* isn't providing sufficient provisions for this age group. Either revamp the *Child Welfare Act* or amend the *Dependent Adults Act* to cover this vulnerable population.
6. In some circumstances a person who is not an adult and needs a substitute decision-maker, it should possibly be enacted at 17 years. This should be in case of the private decision-maker done by peers at the local level.
7. Monitoring is essential.

2.3.2 Participation and representation of the adult in the process

15. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The provisions of the <i>Dependent Adults Act</i> that deal with the adult's participation and representation in the application to appoint a guardian or trustee are satisfactory and do not require significant	5 17% 25%	15 52% 75%	9 31%	

modification.				
(b) The <i>Dependent Adults Act</i> should				
(1) require the court to appoint a lawyer to represent the adult in the application, unless the adult already has their own lawyer	6 16% 22%	21 57% 78%	10 27%	
(2) authorize (but not require) the court to appoint a lawyer to represent the adult in the application	21 58% 64%	12 33%	3 8%	
(3) require the Province to pay for a lawyer appointed by the court to represent the adult, with provision in an appropriate case for the Province to be reimbursed by the adult or the applicant	18 53% 60%	12 35% 40%	4 12%	
(4) require the court, to the extent that it is practicable to do so, to ascertain and consider the wishes of the adult regarding the proposed order	18 76% 82%	6 16% 18%	3 8%	
(5) require that the decision whether to appoint a guardian or trustee be made at a hearing at which the adult is present, unless the court is satisfied that the adult would be wholly unable to understand the nature and purpose of the proceeding or is satisfied that other circumstances make it appropriate to make a decision without holding a hearing at which the adult is present	22 58% 67%	11 29% 33%	5 13%	
(6) provide specifically for a hearing to be held at a location that is readily accessible to the adult.	22 58% 79%	6 16% 21%	10 26%	

RESPONDENTS' COMMENTS

1. At this time I feel that the courts do not have a good understanding of dementia and that many seniors can give an opinion but due to frontal lobe dementia or other difficulties their judgment and decision making skills are not present. At times I believe that the courts are listening to what these people are saying without taking into consideration their deficits

2. As a safeguard, the dependent adult should have the right to appeal a decision with access to and support from a second opinion assessor and/or advocate. To get lawyers involved probably complicates more than clarifies especially if someone can "hold it together" a little bit but not enough longitudinally to remain safe.

3. The rights of the proposed dependent adult are important, but who will shoulder the cost of all these recommendations? Perhaps a tribunal could be set up to reveal complaints but then who is to shoulder the cost whether the appeal is legitimate or not?

4. The onus should not be on the adult to go to court or hire a lawyer. This should be decided, again, by a tribunal, people who are known to the adult. All these court rules and costs discourage people from becoming involved.
5. This is the dependent adult's life and they should have their say in how they shall be cared for and by whom.
6. Re(5): it would be nice if the court could do this, but not be required to.
7. Re (5): Only if needed and fully understood.

2.3.3 Temporary protective measures in urgent cases

16. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The <i>Dependent Adults Act</i> 's approach to protecting an adult's property in urgent cases – by allowing for the appointment of a trustee without a practitioner's report – is satisfactory and does not require significant modification.	10 29% 37%	17 50% 63%	7 21%	
(b) The <i>Dependent Adults Act</i> should				
(1) authorize the court to make an order temporarily prohibiting or restricting certain dispositions of an adult's property (as an alternative to appointing a temporary trustee)	25 69% 89%	3 8% 11%	8 22%	
(2) authorize a designated agency to make an order temporarily prohibiting certain dispositions of an adult's property (e.g. payments from an account) or requiring certain property to be delivered to the Public Trustee for temporary safekeeping.	23 62% 77%	7 19% 23%	7 19%	

RESPONDENTS' COMMENTS

1. For many seniors with dementia, by the time the public trustee becomes involved their account is cleared out by "friends". Also due to the time lag when public trustee becomes involved appropriate housing can not be arranged for the dependent adult. Usually causing the adult to stay in hospital for up to 6 months.
2. Financial institutions are seeing growing incidents of vulnerable seniors who are making inappropriate decisions on use of funds. This may be due to early dementia or influence exercised by fraudsters. As the population continues to age, we expect to see more cases of seniors experiencing these issues with financial management. Financial institutions are often the first to see these signs of problems but have no clear legal capability to freeze accounts or contact relatives (privacy obligations) that might be in a position to intervene. The ability for a third party to apply for temporary intervention by the court or the Public Trustee would be very helpful in such circumstances and would allow the opportunity for the need for other remedies under the Act to be assessed. Third parties such as financial institutions should be able to apply

for these orders, and the process for granting orders should include notification to the adult's family/support network. This issue was of primary interest to our organization and we have limited our comments to this proposal.

3. Only the court should have the authority to grant an Order

4. Should be like in B.C.: take temporary protective actions without court intervention.

5. Re (2): This should be done quickly at the local level. Waiting for a lawyer or judge may be too late and then there is the cost! All these Acts, rules and regulations and Government involvement seems unfair to everyone. The costs again.

6. Re (a): Still must require a practitioner's report. Re (b)(1) & (2): either may work in different situations.

2.3.4 Evidence of diminished decision-making capacity

17. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The provisions of the <i>Dependent Adults Act</i> regarding evidence of diminished decision-making capacity are satisfactory and do not require significant modification.	8 22% 29%	20 56% 71%	8 22%	
(b) The <i>Dependent Adults Act</i> should				
(1) provide a specific procedure for the court-ordered assessment of an adult who refuses to be assessed for the purpose of determining whether they have diminished decision-making capacity and are in need of a trustee	33 85% 97%	1 3% 3%	5 13%	
(2) specify that the practitioner's report must have been completed within a certain period (e.g. 6 months) before the application.	35 92% 97%	1 3% 3%	2 5%	
(3) require an assessment of the adult's capacity by at least two practitioners	26 67% 76%	8 21% 24%	5 13%	
(4) allow practitioners in a broader range of professions to provide a practitioner's report	23 61% 70%	10 26% 30%	5 13%	
(5) require practitioners' reports to be provided only by professionals who, in addition to their professional credentials, are specifically qualified to conduct assessments for the purposes of the <i>Act</i> (e.g. as in Ontario)	25 64% 76%	8 21% 24%	6 15%	
(6) require practitioners to conduct assessments in accordance with detailed prescribed guidelines	34 87% 97%	1 3% 3%	4 10%	

RESPONDENTS' COMMENTS

1. Decision about whether someone is incapacitated have been made by the guardian's office that went against numerous professionals who spent hours assessing and providing evidence that a particular person needed protection. These decisions have caused people to go out into the community and have tragic results due to the guardian's office lack of action.
2. It will be alright to have two physicians conduct assessments on the dependent adult as long as the government picks up the tab, as the doctor's charge fees that most families cannot afford to pick up, especially if there are two!!
3. With regards to requiring that two practitioners assess the adult's capacity, I believe it is reasonable, although not essential, to have these two practitioners assess the client in a team approach and produce one report signed by both of them.
4. Physicians assess capacity as a regular part of their daily work. To require all physicians who would provide a report of capacity to undergo certain processes to be identified as an examiner would be resisted by a majority of the medical profession.
5. Specially trained assessors with multidisciplinary input and criteria would provide the most standardized and consistent forms of assessment. Multiple instruments from a variety of disciplines can be produced to assist with this. In this case, more than one assessor is probably not required except in the case of an appeal.
6. What 'professions' in the "broader range of professions" are you referring to?
7. These assessments should be done with all possible haste in some cases at the local level by at least two practitioners. No cost should be involved.
8. Present provision to offer adequate protection but all the factors in (b) could be incorporated without significant modification.

2.3.5 Giving notice of the proceedings

18. Please indicate whether or not you agree with the following statement.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The provisions of the <i>Dependent Adults Act</i> regarding service of notice of an application to appoint a guardian or trustee are satisfactory and require no significant modification.	11 32% 48%	12 35% 52%	11 32%	
(b) Referring specifically to notification of the adult to whom the application relates,				
(1) the current approach of the <i>Dependent Adults Act</i> is satisfactory	10 29% 40%	15 43% 60%	20 29%	
(2) service of the application documents on the adult	18	15	5	

	should be required in all cases	47% 55%	39% 45%	13%	
	(3) the <i>Act</i> should specify the circumstances in which the court may dispense with service on the adult	32 86% 97%	1 3% 3%	4 11%	
	(4) where possible, the applicant should be required to certify that the adult has been given an explanation of the purpose of the application and of the adult's right to oppose it	27 73% 84%	5 14% 16%	5 14%	
	(5) service should only be dispensed with if the Public Guardian (guardianship) or Public Trustee (trusteeship) consents	8 22% 31%	18 50% 69%	10 28%	
(c) Referring specifically to notification of family members of the adult,					
	(1) the current approach of the <i>Dependent Adults Act</i> is satisfactory	18 51% 64%	10 29% 36%	7 20%	
	(2) the <i>Act</i> should require notification of all close family members over the age of 18 who have not consented to the application	21 58% 81%	5 14% 19%	10 28%	
	(d) The <i>Dependent Adults Act</i> should continue to require the application documents to be served on the person in charge of an institution at which the adult resides	27 77% 87%	4 11% 13%	4 11%	

RESPONDENTS' COMMENTS

1. Usually the time it takes to serve people etc. is very lengthy and in the meantime the person does not have access to funds or a decision maker.
2. Serving the person in charge of an institution provides what for the client?
3. As a private trustee I frankly dread having to go to a secured unit in a care facility, explain every time why I have to serve the dependent adult, and then serve the dependent adult who has advanced Alzheimer's.
4. My concern for having "required service of documents" is for those clients who may be in a comatose condition...i.e. on life support due to an accident, etc. Any "requirement" could mean that this person may not be able to have a family member act in the patient's best interest.
5. These forms are far too lengthy, repetitive and confusing for most people to use effectively by interested family members. All involved close family should know what is being proposed with the opportunity to discuss or challenge same. If someone is obviously oblivious to these proceedings, service is probably as unnecessary as it is futile.
6. The adult should be served with the papers but it should be a requirement that someone is with the adult to ensure the confidentiality is protected.

7. ALL relatives of dependent persons need to receive copies of the application documents and need to be invited to information sessions about guardianship and trusteeship. There must be incentives for people to attend these sessions; continuing education is critical and is currently non-existent.

8. The power of decision should not be with the PGA alone. All immediate family members should be consulted, also professionals, i.e. doctor.

9. Re (d): The institution only needs the Court Order indicating who the guardian and/or trustee is.

10. If more than one family member to serve, serve at least one by registered mail and the rest by regular mail.

2.3.6 The trustee's plan for administering the property

19. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The current practice in Alberta, under which the application to appoint a trustee must indicate briefly the steps that the trustee proposes to administer the adult's estate, is satisfactory and does not require significant modification.	17 46% 59%	12 32% 41%	8 22%	
(b) The (proposed) trustee should be required to provide a detailed plan for administering the adult's property, which would indicate how they plan to deal with particular assets, liabilities income sources and expenses of the adult.	24 63% 73%	9 24% 27%	5 13%	
(c) If the (proposed) trustee is required to provide a detailed plan for administering the adult's property, there should be a requirement for the plan to be reviewed and approved				
(1) by the court	15 41% 48%	16 43% 52%	6 16%	
(2) by a government official, such as the Public Trustee	22 59% 71%	9 24% 29%	6 16%	

RESPONDENTS' COMMENTS

1. Again, my concern is "who" knows the best interest of the client in ALL cases and how would the Government officials be able to draw up guidelines that take into consideration subjective objectives and not just objectional? i.e. how would personal wills be taken into account? Would the Court or Public Trustee supercede the client's last will and testament? The Public Trustee

should only be involved if there are no family members willing and able to provide the service for their family member.

2. In theory it would be appropriate to provide a detailed plan for administering property; however, this can be difficult in some cases to assemble, particularly before the application goes to court.

3. A detailed accounting should probably be submitted to the [public] trustee’s office annually for review by other interested parties should they wish to do so. A general plan to satisfy the public trustee that it is reasonable can be done in the initiation of trusteeship and should only be as complicated as the estate requires.

4. Generally, it is better for the Public Trustee to manage the finances of a dependent person. Applicants for private trusteeship need to be thoroughly assessed to ensure that they will not exploit these most vulnerable people.

5. The proposed trustee, public, should be reviewed by the court but the private proposed trustee should be reviewed at the local level. Public and private should be two different regulations.

6. (b) should depend on the value of the estate and (c) i.e., \$50,000.00 and over.

7. Monitor on a regular basis.

2.3.7 Public Trustee’s role in applications to appoint a private trustee

20. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The current approach of the <i>Dependent Adults Act</i> – which requires the Public Trustee to be notified of an application to appoint a private trustee but does not specify the responsibilities of the Public Trustee when notified – is satisfactory and does not require substantial modification.	10 27% 34%	19 51% 66%	8 22%	
(b) The <i>Dependent Adults Act</i> should not require the Public Trustee to be notified of applications to appoint a private trustee.	6 16% 19%	26 70% 81%	5 14%	
(d) The <i>Dependent Adults Act</i> should require the Public Trustee to provide input to the court regarding the following matters:				
(1) whether it is appropriate to appoint a trustee for the adult	21 58% 68%	10 28% 32%	5 14%	
(2) the apparent suitability of the person(s) proposed as trustee	21 57% 75%	7 19% 25%	9 24%	
(3) the terms of the proposed trusteeship order (e.g.	23	7	7	

scope of the trustee's authority).	62%	19%	19%	
	77%	23%		
(e) The <i>Dependent Adults Act</i> should allow the Public Trustee to charge a reasonable fee for carrying out any of the functions referred to above.	13	18	5	
	36%	50%	14%	
	42%	58%		

RESPONDENTS' COMMENTS

1. Requirement of the Public Trustee to provide input can provide the judge with comfort about suitability at a reasonable cost.

2. The family must be the first response. Should there be no willing or able family member THEN the Public Trustee should be considered.

3. Many people are living on fixed incomes and their alternative decision makers are already doing much to keep dependent adults away from incurring additional expenses to the system. The province should look instead at small compensation for the trustees rather than the public Trustee extracting from them. Simplify the process and the additional expenses outside of what we pay public trustees to do should be minimal

4. The Public Trustee is a public service and all fees should come from government funds.

5. If the OPT does not have the "screening" function, then a public body like tribunal set up is in order to prevent financial abuse.

6. How can a public trustee have the information (correct) to be the only judge as to the suitability of a private trustee? It seems their powers are too broad.

7. Re (e): The rich would be protected and the poor would be further disadvantaged.

8. I think the legislation should state that the Public Trustee does not have to do anything.

2.3.8 How the court makes its decision

21. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The provisions of the <i>Dependent Adults Act</i> that deal with the process by which the court considers and decides an application to appoint a guardian or trustee are satisfactory and do not require significant modification.	11 31% 44%	14 39% 56%	11 31%	
(b) The provisions that deal with the circumstances in which the court may decide the application without holding a hearing (a desktop application) are satisfactory and do not require significant modification.	16 43% 64%	9 24% 36%	12 32%	

(c) The <i>Dependent Adults Act</i> should					
(1) clarify that the applicant has the option of scheduling a hearing at the outset (i.e. filing and serving a notice of motion with the initiating documents) instead of waiting to see whether someone files an objection	19 53% 73%	7 19% 27%	10 28%		
(2) allow the court to decide the application without a hearing even if an objection is filed, if the court is satisfied that a hearing is unnecessary	20 54% 74%	7 19% 26%	10 27%		
(3) require hearings to be held in private, unless the court orders otherwise.	17 47% 63%	10 28% 37%	9 25%		
(4) require hearings to be held in public, unless the court orders otherwise	9 28% 36%	16 50% 64%	7 22%		

RESPONDENTS' COMMENTS

1. A tribunal process may be more efficient for most applications and to the degree that the departments are streamlined and the forms and processes are simplified, it should be a pretty straight forward procedure in most cases.
2. The process from time of application received by OPT to court date takes too long. There needs to be a time frame established...i.e. Goal: process needs to be completed within one month of application being received by OPT.
3. Why should Calgary and Edmonton have conflicting regulations? The Act should have clarity and the same rules for all jurisdictions.
4. Value of estate, lack of suitable guardian or trustee would affect answers.

2.4 Safeguards and other matters relating to selection of the trustee

2.4.1 Who can be appointed trustee?

22. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The provisions of the <i>Dependent Adults Act</i> regarding who is eligible to be a trustee are satisfactory and do not require significant modification.	7 21% 26%	20 59% 74%	7 21%	
(b) The <i>Dependent Adults Act</i> should				
(1) allow the court to appoint an individual who	20	13	7	

	is not a resident of Alberta as a trustee	50% 61%	33% 61%	18%	
	(2) provide a list of matters for the court to consider in deciding whether someone will be a suitable trustee (e.g. professional or educational qualifications, prior bankruptcies, convictions for relevant criminal offences)	32 82% 89%	4 10% 11%	3 8%	
	(3) provide more guidance as to the circumstances in which an individual is or is not considered to be in a conflict of interest	31 79% 91%	3 8% 9%	5 13%	
	(4) require the proposed trustee to provide specific information that will allow the court to better assess whether there is likely to be a conflict of interest	32 82% 91%	3 8% 9%	4 10%	
	(5) allow the court to appoint someone as trustee even if there is a potential conflict of interest, if the court is nevertheless satisfied that the person is the most appropriate person willing to act as trustee.	20 54% 77%	6 16% 23%	11 30%	

RESPONDENTS' COMMENTS

1. A concern that I have is with the service providers....and my personal experience is that the one I was dealing with was/is not honest with their dealings with the client. There are parents who have the service provider "bill" the Public Trustee directly, and there are no clarifications provided and no audits done with the billings. I have seen cases where the service provider is inaccurate and dishonest with their finances.

2. Keep it clean

3. If there is any doubt about conflict of interest, the Public Trustee should be appointed. A person does NOT need to have "a long-standing caring relationship with the adult" in order to handle that person's finances. However, the caring relationship is VERY IMPORTANT for guardianship!

4. Re (b)(1): A public trustee should be from Alberta. A private trustee from elsewhere should only be appointed if they are the only suitable trustee who is involved with the adult on an ongoing basis. They should be monitored closely.

5. (a) is best option but in individual circumstances (b) 1 to 5 may be factors in final decisions. The court has to be flexible to respond to the specific needs of each individual.

2.4.2 Requiring trustee to provide security

23. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
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(a) The <i>Dependent Adults Act</i> 's current approach to the subject of the security from the trustee – silence – is satisfactory and does not require significant modification.	10 29% 43%	13 37% 57%	12 34%	
(b) The <i>Dependent Adults Act</i> should				
(1) expressly allow the court to require a trustee to provide security in a form and amount to be determined by the court, without creating a presumption that security will be required	15 44% 60%	10 29% 40%	9 26%	
(2) require all individual trustees to provide security unless the court orders otherwise	9 26% 35%	17 50% 65%	8 24%	
(3) if individuals who are not residents of Alberta are permitted to be trustees, require them to provide security unless the court orders otherwise.	23 68% 79%	6 18% 21%	5 15%	

RESPONDENTS' COMMENTS

1. Given the modest fees to a trustee for an estate under \$500K, requirements for security will likely cause individuals to decline appointment and lead to more work at the Public Trustee's office.
2. Not everyone who is a Trustee has the ability to provide a bond. The act of being a Trustee is one that is done out of love and concern...as the term says..."trust ee".
3. More costs to be borne by the adult's assets! It seems as the Act stands it's just an option for security by the court. Less court involvement and costs is desirable. This part of the Act should be more concise.
4. Courts and society should make being a guardian or trustee easier not more difficult.

2.4.3 Appointment of two or more trustees

24. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The <i>Dependent Adults Act</i> 's current approach to the appointment of co-trustees – silence – is satisfactory.	5 15% 19%	21 64% 81%	7 21%	
(b) The <i>Dependent Adults Act</i> should provide that if the court appoints two or more co-trustees, the trustees				
(1) must act jointly (e.g. a legal document is effective only if signed by both)	14 37% 45%	17 45% 55%	7 18%	
(2) may act independently (e.g. a legal document	10	19	8	

	is effective if signed by either)	27%	51%	22%	
		34%	66%		
	(3) may act jointly or independently depending on what the court order provides.	23	5	6	
		68%	15%	18%	
		82%	18%		

RESPONDENTS' COMMENTS

1. Only if the co-trustee is a family member would this be appropriate.
2. If the co-trustees are allowed to act independently then each one must be accountable to the court for any losses or problems that may arise from their decisions.
3. Why complicate this? If one requires a co-signer for protection of the dependent adult then two signatures are required. If someone is needed to share duties, then the alternate provision already exists and can be worked out between the two of them.
4. Only ONE person should be appointed as trustee.
5. Multiple trustee appointment can create a lot of complication. It is better if their authorities are clearly stated in the Order to prevent expensive legal battles if there is disagreement.
6. If the co-trustees can act independently I can see a problem if they do not agree and don't consult with each other. My daughter and I consult with each other on everything pertaining to my husband and son, and in six years, we have made good decisions.
7. This is probably best to be left to a case-by-case basis.
8. One is alternate. Both if appointed by adult prior to need.

2.5 Trustees' powers and how they must be exercised

2.5.1 Legal nature of the trustee's position

25. Please indicate whether or not you agree with the following statements.		Agree	Do Not Agree	Not Sure	No Opinion
(a)	The <i>Dependent Adults Act</i> is as clear as it needs to be as to whether a "trustee" appointed under the <i>Act</i> is a trustee or an agent.	5 16% 25%	15 47% 75%	12 38%	
(b)	The <i>Dependent Adults Act</i> should				
(1)	specify that property subject to the trusteeship				
	(i) vests in the trustee	11 33% 55%	9 27% 45%	13 39%	

	(ii) does not vest in the trustee	11 33% 52%	10 30% 48%	12 36%	
(2) specify that contracts entered into by the trustee in that capacity (and within the terms of their authority)					
	(i) are binding on the adult personally	9 28% 45%	11 34% 55%	12 38%	
	(ii) are binding on the trustee personally, unless the trustee has made the capacity in which they are acting clear to the other party before entering into the contract.	23 68% 85%	4 12% 15%	7 21%	

RESPONDENTS' COMMENTS

1. Now that piece of the Act is about as confusing as it can get. It would seem to leave everything up to the court – this needs a clear-cut ruling.

2.5.2 Trustees' powers

26. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The provisions of the <i>Dependent Adults Act</i> that describe the powers of trustees are satisfactory and do not require significant modification.	6 17% 25%	18 51% 75%	11 31%	
(b) The <i>Dependent Adults Act</i> should provide that –				
(1) the powers given to the trustee should be no more intrusive or extensive than necessary to effectively provide the adult with the assistance that they require	30 81% 86%	5 14% 14%	2 5%	
(2) a trustee has only those powers that the court expressly gives to them	22 59% 69%	10 27% 31%	5%	
(3) subject to any limitations or restrictions imposed by the court, a trustee has the power to make and carry out any decision relating to property matters that the adult would have if they had full capacity	30 83% 88%	4 11% 12%	2 6%	
(4) the court may require the trustee to obtain the consent of a designated agency (e.g. the Public Trustee) to certain transactions.	24 65% 73%	9 24% 27%	4 11%	

RESPONDENTS' COMMENTS

1. If the trustee is planning to sell the property in which the adult resides, it is especially important that the trustee be required to seek authorization from the court or another body. The court or alternate body should be satisfied that the decision to move the adult out the home has been made by a person with the correct decision-making authority- i.e. the adult, the guardian, or

the agent. This acts to prevent the trustee from making decisions out of their scope of authority, such as the adult's personal affairs, by forcing a decision that the adult should relocate by removing the adult from their current residence.

2. You either need a trustee or you don't. If the dependent adult could decide safely then they wouldn't need a surrogate. When they can't do that, they need a surrogate. You cannot be partially pregnant either.

3. Checks and balance mechanism is important but at the same time should be less intrusive as possible.

4. This needs clarification – if the Act and courts are too restrictive then what is the point of being a trustee? Circumstances sometimes change, i.e., they have moved my son six times in five years. New expenses!

5. Re (a): the court can already impose restrictions if deemed necessary. (b) seems to be a duplication of (a).

2.5.3 Trustees' responsibilities when exercising their powers

27. Please indicate whether or not you agree with the following statements.		Agree	Do Not Agree	Not Sure	No Opinion
(a) The provisions of the <i>Dependent Adults Act</i> that specify the general duties of trustees when exercising their powers are satisfactory and do not require significant modification.		6 17% 24%	19 54% 76%	10 29%	
(b) The <i>Dependent Adults Act</i> should specifically provide					
	(1) that a trustee must act in the best interest of the adult	37 100% 100%	0 0% 0%	0 0%	
	(2) that, in making a decision regarding a particular matter, a trustee must consider, to the extent possible,				
	(i) views or wishes expressed by the adult at a time that they had the capacity to make a decision regarding the matter	35 97% 100%	0 0% 0%	1 3%	
	(ii) relevant beliefs and values held by the adult at a time that they had the capacity to make a decision regarding the matter	35 97% 100%	0 0% 0%	1 3%	
	(iii) the current views or wishes of the adult	25 69% 86%	4 11% 14%	7 19%	
	(iv) any effect that the decision will have on the personal comfort and well-being of the adult	33 97% 97%	1 3% 3%	0 0%	

	(v) the non-monetary value or significance to the adult of particular property, if the trustee is considering the sale or other disposition of that property	28 78% 93%	2 6% 7%	6 17%	
	(3) that a trustee must manage the adult's property in a manner that is consistent with decisions regarding the adult's personal care made by the person with authority to make personal decisions, unless there are special reasons for not doing so	31 89% 97%	1 3% 3%	3 9%	
	(4) that the trustee must not enter into any transaction in which the interests of the trustee are likely to be in conflict with the interest of the adult.	33 92% 94%	2 6% 6%	1 3%	

RESPONDENTS' COMMENTS

1. If the adult owns a large estate then there should be specific safeguards in place. The disposition of property should be monitored.
2. Re (c): A good trustee should be taking all these factors into account when making, especially major, decisions.
3. Re (3): Trustee and guardian should work together to serve the adult. Trustee should not be put in a position where they must endorse guardian's opinion as to what to do with client's money.

2.5.4 The standard of care and skill expected of trustees

28. Please indicate whether or not you agree with the following statements.		Agree	Do Not Agree	Not Sure	No Opinion
(a)	The approach of the <i>Dependent Adults Act</i> to the standard of care and skill expected of trustees – silence – is satisfactory.	2 6% 9%	21 60% 91%	12 34%	
(b) The <i>Dependent Adults Act</i> should provide					
	(1) that trustees must exercise the care, skill and diligence that a person of ordinary prudence would exercise in managing their own financial affairs	37 100% 100%	0 0% 0%	0 0%	
	(2) that trustees who are remunerated must exercise the care, skill and diligence that a person in the business of managing the property of others is required to exercise	28 78% 80%	7 19% 20%	1 3%	
	(3) that a trustee should not be liable for any decision made or action taken if the trustee acts in good faith and to best of their ability and in what the trustee believes to be the adult's best interest.	27 73% 84%	5 14% 16%	5 14%	

RESPONDENTS' COMMENTS

- 1. I never knew that Trustees were remunerated...they should NOT be.
- 2. Private trustees may benefit from consultation with public body like public trustee office for advice if in doubt. If needs to be mechanism to address accountability of the trustee's decision to provide the dependent adult.
- 3. If a trustee is not held accountable then who decides if they acted in good faith? If a trustee gets remuneration then they should have more restrictions than someone who does not!

2.5.5 The adult’s residual capacity to deal with property

29. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The approach of the <i>Dependent Adults Act</i> regarding the effect of transactions entered into by an adult for whom a trusteeship order is in effect – silence – is satisfactory.	5 14% 25%	15 43% 75%	15 43%	
(b) The <i>Dependent Adults Act</i> should state that a transaction entered into by an adult for whom a trusteeship order is in effect				
(1) is not binding on the adult unless it is for necessities or is otherwise in the best interest of the adult	20 59% 83%	4 12% 17%	10 29%	
(2) is not binding on the adult unless it is proved that the other party did not have reasonable grounds for believing that the adult lacked capacity to enter into the transaction.	15 44% 60%	10 29% 40%	9 26%	
(c) The <i>Dependent Adults Act</i> should allow the trustee to authorize the adult to enter into certain types of transaction.	19 56% 76%	6 18% 24%	9 26%	

RESPONDENTS’ COMMENTS

- 1. I have heard of a family member who sold the property of a parent and reaped the benefits. The family member apparently had the parent sign an agreement while the parent was on his/her death bed. Now, if these proposed changes would protect this from happening, then, yes, I am in agreement
- 2. Trustee can allow some dependent adults to keep a bank account but allow small amounts of transactions (weekly withdrawal for weekly spending or for necessities) to allow some degree of autonomy and dignity but the arrangement is to be monitored by the Trustee. Purpose is to preserve some degree of autonomy of dependent adult for human dignity and fostering sense of independence. The trustee still have over all control of the dependent adult’s estate and all financial matters.

3. Clarification for Alberta, citing safeguards against the trustee taking advantage, especially one who takes remuneration.
4. The court already can take to task any trustee who is not acting in the best interests of the dependent adult.
5. #2 is problematic because many dependent adults present well.
6. Re (c): In living arrangements – best interest.

2.5.6 The trustee’s responsibilities relating to investment

30. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The <i>Dependent Adults Act</i> ’s approach to describing the investment powers of trustees – legal list by default, with provision for court to grant broader powers – is satisfactory and does not require significant modification.	7 21% 35%	13 38% 65%	14 41%	
(b) Unless the trusteeship order provides otherwise, trustees appointed under the <i>Dependent Adults Act</i> should be required to invest the adult’s funds in accordance with the prudent investor rule.	26 72% 87%	4 11% 13%	6 17%	
(c) The <i>Dependent Adults Act</i> should not set out a default investment rule, but should instead provide that a trustee must invest the adult’s funds in accordance with a written plan that is submitted by the trustee and approved by the court or a designated agency.	11 31% 46%	13 37% 54%	11 31%	

RESPONDENTS’ COMMENTS

1. *Dependent Adults Act* must ensure a clear accountability mechanism in place for all appointed private trustees' decision making relating to investment. No previous experience with this matter and has no idea how swiftly the Court responds to these needs. While written plan is a good baseline and references, who is to ensure a written plan is reviewed and at what point does it warrant revision? If court process to review parameters is too long, the dependent adult may lose potential income, but then if there is no safeguard process, the dependent adult may bear the losses for not well researched decisions of the trustees.

2. In my Judge Order I was not restricted but I have invested in a prudent fashion in safe (GICs) at a good return. Even though my son’s assets are very small.

2.5.7 Legal proceedings by or against the adult

31. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
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(a) The provisions of the <i>Dependent Adults Act</i> that deal with legal proceedings by or against dependent adults are satisfactory and do not require significant modification.	13 36% 59%	9 25% 41%	14 39%	
(b) The <i>Dependent Adults Act</i> should provide that any settlement of a legal claim that is entered into by the trustee on behalf of the adult is binding on the adult only if it is approved by the court.	22 67% 81%	5 15% 19%	6 18%	

RESPONDENTS' COMMENTS

1. I recall a case in the past in which the Public Guardian representative stated their practice that they cannot initiate divorce proceeding for the dependent adult appointed when the dependent adult is incapable of initiating a divorce, but really she should from the point of view that she has separated from the husband for over a decade, and the husband was reluctant to start divorce proceedings as he does not wish to divide up their land and house bought under both names. This is strictly for his own financial benefit that he refuses to set the divorce proceedings in motion. Perhaps, the Court should come in at that time to make the decision when the OPG refused to address this matrimonial issue that has implications to the dependent adult's financial welfare.

2. For matter of significant value, yes, i.e., sale of property should require court approval.

2.5.8 Using the adult's property to benefit others

32. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The provisions of the <i>Dependent Adults Act</i> that deal with the use of an adult's property to benefit other persons are satisfactory and do not require significant modification.	6 17% 26%	17 47% 74%	13 36%	
(b) Provided that sufficient property will remain to meet the adult's needs, the <i>Act</i> should give trustees some discretion to make gifts to friends or family of the adult or to charities, if there are reasonable grounds to believe that the adult would have made such gifts if capable.	25 71% 83%	5 14% 17%	5 14%	
(c) If the <i>Act</i> gives trustees some discretion to make gifts, there should be a limit on the amount or value of gifts that they can make without specific court authority.	29 81% 88%	4 11% 12%	3 8%	
(d) The <i>Dependent Adults Act</i> should state that allowing someone other than a spouse, partner or dependent child of the adult to use the adult's property without paying fair market rent is to be treated as making a gift to that person.	23 66% 82%	5 14% 18%	7 20%	

RESPONDENTS' COMMENTS

1. Unless it can be shown that the free rent did provide benefit to the adult. eg. house sitting a vacant house provides security and keeps the insurance alive.
2. There ought to be some accountability built into the gift giving element such that the public trustee, courts or other interested family can oversee, advise, or have the right to appeal such decisions.
3. Again the concerns here would be more with private trustees' decision and less with the practice of OPT as the Office has auditing process in place. In my opinion, wide discretionary power should not be endorsed for private trustees. If one wants to set a limit on the amount or value of gifts, one needs to look at setting up a limit amount within a stated time frame. Again, once you allow that to happen, it is not clear who would monitor or enforce these rules to prevent abuse or not-so-prudent decisions on the part of the trustees' assumptions about the relationships of the dependent adult and certain family members plus friends and charities. What proofs should be required to justify these gifts? What if the trustee claims the dependent adult has verbally expressed those wishes before without providing any concrete proofs, who is going to be referee to endorse such decisions by these private trustees? It is a difficult balance to maintain a "human" face with flexibility, yet at the same time needing to ensure the money being spent is not based on frivolous beliefs or "nice" gestures.
4. There should be many restrictions on gifts, also someone other than a dependent person using property and other assets of the dependent adult. The rules should be specific.
5. Re (b): With approval of the court and having a plan approved by the court.

2.6 Duration and review of trusteeship

33. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The provisions of the <i>Dependent Adults Act</i> that deal with review of trusteeship orders are satisfactory and do not require significant modification.	5 15% 21%	19 56% 79%	10 29%	
(b) The <i>Dependent Adults Act</i> should				
(1) provide guidance as to the matters to be considered on the review of a trusteeship order	32 86% 94%	2 5% 6%	3 8%	
(2) provide that trusteeship orders last indefinitely, without the need for periodic review, unless the court decides that periodic reviews are necessary	4 11% 12%	29 81% 88%	3 8%	
(3) provide that trusteeship orders must be reviewed periodically unless the court dispenses with the requirement for periodic review if satisfied that there is no reasonable prospect of substantial improvement in the adult's condition	23 62% 72%	9 24% 28%	5 14%	
(4) provide a simpler, less costly procedure for routine periodic reviews of trusteeship orders	32 86%	2 5%	3 8%	

		94%	6%		
	(5) require the trustee to apply for a review of the order if there is any change in circumstances that suggests that there may no longer be a need for the order or that the terms of the order are no longer appropriate	33 89% 94%	2 5% 6%	2 5%	
	(6) designate an agency to make periodic enquiries regarding the continuing need for trusteeship order and to initiate a formal review if not satisfied that the order should remain in effect	18 51% 69%	8 23% 31%	9 26%	
	(7) clarify the status of a trusteeship order if the trustee does not apply for a review of the order within the required time, which should be	24 75% 86%	4 13% 14%	4 13%	
	(i) that the order automatically terminates and the trustee's authority lapses	8 24% 33%	16 47% 67%	10 29%	
	(ii) that a designated agency should be responsible for bringing the matter to the attention of the court, which should be authorized to suspend the trustee's authority and to appoint an interim trustee pending completion of a review	21 60% 72%	8 23% 28%	6 17%	
	(iii) that the order remains in effect, but that the trustee is subject to monetary penalties.	8 24% 35%	15 44% 65%	11 32%	

RESPONDENTS' COMMENTS

1. Simplify, simplify, simplify. There is no need, in most cases for a complete re-application process with the exception of recovery-anticipated applications. Have the annual financial reports and medical report and request for continuance or alteration on a couple of sheets. Keep it simple.
2. The Public Trustee should be responsible for reviewing private trusteeship.
3. PLEASE DO NOT create another private, profit-making agency to fulfill the monitoring tasks. Monitoring is important. Appointed trustee are humans, they age, can get ill and may have problems fulfilling the responsibilities. Thus review is necessary even for cases in which the dependent adult suffers from irreversible, progressive deteriorating conditions with prediction that they will never be able to manage their own finances ever. But the suitability of continuation of appointed private trusteeship is still relevant with these cases. I hope the OPT will be the designated body that has mandate to review cases of abuse or cases in questions, that OPT will receive sufficient resources to fulfil this role re: enhancing accountability of private trusteeship plus problem resolution, plus public consultation, public education role for all private trustees to fulfill their legal role in the best interests of the dependent adult.

4. If the review is not brought to court then it is very likely that there are no funds to do so. It should not be costly to do the passing of accounts. This is another argument for the review to be done locally by persons who know all the persons!!

5. Re (7)-(i),(ii),(iii): Before any action is taken, check and find out why review was not applied for. Many dependent adults are being cared for by family friends that are themselves having difficulty but are good trustees, but may need help with legal stuff.

6. To not apply - could be oversight. Reminder given.

2.7 Oversight of trusteeship

2.7.1 Accounting requirements

34. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The provisions of the <i>Dependent Adults Act</i> that deal with accounting by trustees are satisfactory and do not require significant modification.	6 18% 24%	19 56% 76%	9 26%	
(b) Trustees should be required to file accounting records at predetermined intervals.	26 70% 76%	8 22% 24%	3 8%	
(c) Trustees should not be required to have their accounts reviewed and approved at predetermined intervals, but should be required to do so if the court, on the application of an interested person, directs them to do so.	15 39% 41%	22 58% 59%	1 3%	
(d) Trustees should be required to have their accounts reviewed and approved at predetermined intervals, but a designated agency, rather than the court, should be the body with primary responsibility for reviewing and approving the accounts.	24 65% 77%	7 19% 23%	6 16%	
(e) If trustees are required to get their accounts approved at predetermined intervals, the interval should be				
(1) 1 year	6 21% 25%	18 62% 75%	5 17%	
(2) 2 years (the current default interval)	10 32% 38%	16 52% 62%	5 16%	
(3) determined by the court.	23 72% 77%	7 22% 23%	2 6%	

(f) A designated agency should be responsible for monitoring whether trustees file their accounts or apply to have them approved when required to do so, and for bringing the matter to the attention of the court when a trustee does not comply with the requirement.	26 74% 84%	5 14% 16%	4 11%	
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RESPONDENTS' COMMENTS

1. Send reminder notices to Trustees when time for review has lapsed before doing anything draconian.
2. Annual approval should be a two-tiered process. First to a designated agency of the court, and only to the courts on the recommendation of the agency after their review or on request of defined parties with an interest, such as relatives. The goal here is protection and oversight without having to pay large legal bills out of the dependent adult's estate.
3. The default term should be two years but the court could set a longer or shorter term.
4. Have unusual expenditures pass before the agency/court for approval with annual statements compiled but submitted every couple of years.
5. No more for-profit agency created please for monitoring purpose. Provide OPT the resource and manpower to do so.
6. I believe the Public Trustee should be required to pass accounts to the court every two years. The private trustee is a different matter because of the cost. Private trustees should not be required to use a lawyer and a judge.
7. Re (c): depends on value total of \$50,000.00 or more change default to three years or determined by court.
8. Report annually.

2.7.2 Investigating concerns about trustee actions or inaction

35. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The approach of the <i>Dependent Adults Act</i> to investigation of concerns about the manner in which a trustee is exercising their powers – silence – is appropriate and no substantial modifications are required.	2 6% 7%	25 71% 93%	8 23%	
(b) The <i>Dependent Adults Act</i> should				
(1) authorize a designated agency, without having being directed to do so by a court, to investigate allegations that a trustee is exercising their powers in an improper manner or is not carrying out their duties, and describe	21 60% 72%	8 23% 28%	6 17%	

the powers of the investigating agency				
(2) authorize the court to direct a designated agency or other appropriate person to investigate allegations that a trustee is exercising their powers in an improper manner or is not carrying out their duties.	23 66% 74%	8 23% 26%	4 11%	

RESPONDENTS' COMMENTS

1. My main concern here is with the private service providers.
2. Either alternative would be acceptable.
3. There needs to be a better protocol with existing bodies, committees that handle abuse concerns. There needs to be better co-ordination with police authorities to develop a responsive system to deal with legal and practical concerns once potential abuse is identified.
4. I do not understand how a public guardian and public trustee can do justice to a client on any level. They are not required to give any information to the client's families on anything. For 36 years my son had a public trustee and guardian and they never gave information.
5. Investigate without court.

2.8 Other matters that may arise in trusteeships

2.8.1 Preventing failure of gifts in adult's will

36. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The anti-ademption provisions of the <i>Dependent Adults Act</i> are satisfactory and do not require significant modification.	5 19% 29%	12 46% 71%	9 35%	
(b) The <i>Dependent Adults Act</i> should				
(1) require a trustee to make a reasonable effort to find out whether the adult has a will and, if so, what it says	30 86% 97%	1 3% 3%	4 11%	
(2) prohibit the trustee from selling property of the adult that the trustee knows to be the subject of a specific gift in the adult's will unless this is necessary in order to meet the trustee's duties	31 89% 94%	2 6% 6%	2 6%	
(3) provide that the doctrine of ademption does not apply where property that is subject to a specific gift in an adult's will is sold by a trustee, and that the person who would have received the property under the will has an equivalent claim against the residue of the estate	14 41% 58%	10 29% 42%	10 29%	
(4) authorize the court to compensate a person out of the estate of the adult if the person has lost a benefit under	21 60%	6 17%	8 23%	

the adult's will because of a sale of property by the trustee.	78%	22%		
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1. The sale of the property may be to provide money for care. In this case it would be necessary
2. If the sale of the property is needed in order to have money to care for the client then that is how it should be...then the person listed in the will would receive the remainder of what is left of that property sale at time of the client's death.
3. Meeting the basic needs, treatment and care needs of the dependent adult should be placed as paramount importance for financial decision making rather than fulfilling an instruction for disposing gifts designated in the dependent adult's will. The dependent adult may not afford to give away his/her piece of land if he/she needs to maintain adequate care level in the community or care facility setting.
4. I am not sure how Wills work – private trustees and guardians need more information about Wills and Estates. This should be given to us when we become agents in the form of an easy-to-understand brochure!
5. Percent value of the estate should be the benchmark. Financial needs of adult must be first and foremost. Residue of estate to be considered on percent basis.

2.8.2 Changing the trustee

37. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The provisions of the <i>Dependent Adults Act</i> regarding replacement of trustees because of death of the trustee, or for any other reason, are satisfactory and do not require significant modification.	9 26% 36%	16 46% 64%	10 29%	
(b) If there is no alternate trustee, the Public Trustee should have the <i>discretion</i> to take over for a trustee who has died, rather than automatically becoming trustee when notified of the trustee's death.	20 57% 69%	9 26% 31%	6 17%	
(c) If there is no alternate trustee, the <i>Dependent Adults Act</i> should allow the Public Trustee to act as trustee pending court appointment of another trustee where an event occurs that clearly makes it impossible or inappropriate for the original trustee to continue to act as trustee.	30 86% 94%	2 6% 6%	3 9%	
(d) If the ability or suitability of a trustee to continue to act in that role is put in issue, the court should be expressly authorized to suspend the authority of the trustee and to appoint the Public Trustee or someone else as interim trustee, pending determination of the issue.	28 80% 90%	3 9% 10%	4 11%	

(e) The <i>Dependent Adults Act</i> should expressly authorize the court to replace a trustee with a new trustee (under the original trusteeship order) when the original trustee dies or is discharged for any reason.	28 85% 93%	2 6% 7%	3 9%	
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RESPONDENTS' COMMENTS

1. It seems to me that there are complicated grey areas that need to be addressed in a new Act. More private guardians and trustees should be encouraged to become an agent.

2.8.3 Trustee's authority after the adult's death

38. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The current approach of the <i>Dependent Adults Act</i> to describing what happens to the trustee's authority when the adult dies – silence – is satisfactory.	6 18% 23%	20 59% 77%		
(b) The <i>Dependent Adults Act</i> should state that the trustee's authority continues, to the extent necessary to preserve and protect the adult's property, until a person with authority to administer the estate takes possession of the deceased's property.	31 89% 94%	2 6% 6%	2 6%	

RESPONDENTS' COMMENTS

1. Who determines who has authority to administer the estate? What happens without a Will? When one makes a Will, it states I... being of sound mind. Elaborate on this!

2.8.4 Enforcing trustees' duties

39. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The <i>Dependent Adults Act</i> should provide specific monetary penalties (fines) for				
(1) failure to submit accounts for approval when required to do so	17 47% 65%	9 25% 35%	10 28%	
(2) failure to apply for a review of a trusteeship order when required to do so.	16 44% 59%	11 31% 41%	9 25%	

RESPONDENTS' COMMENTS

1. Where would the penalty funds be allocated to?

2. I believe it is better to state clearly that the trusteeship would end for both of the above circumstances. What if the trustee fails to pay for the fines, who is to ensure they'll pay it or could they afford to pay them. They should be allowed to apply for an extension for both expectations but failure to do so should result in termination of trusteeship and be taken over by OPT immediately. If there is no clear consequences outlined, poor compliance could be expected.

3. Private as well as public should have to submit accounts but the private agents should not have to go before a judge with a lawyer. A tribunal would be sufficient, less costly and less time consuming. Done in haste.

4. If there is abuse, agree, but first determine the reason for not applying. Many ill seniors are looking after the elderly and many need help in making these applications. Do not allow the court to beat up on good caregivers.

2.8.5 Trustee compensation

40. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The provisions of the <i>Dependent Adults Act</i> that deal with trustee compensation are satisfactory and do not require significant modification.	9 25% 38%	15 42% 63%	12 33%	
(b) The <i>Dependent Adults Act</i> should provide for a prescribed schedule of fees for private trustees, with provision for the prescribed fee to be adjusted up or down by the court to reflect the value of the services.	28 80% 85%	5 14% 15%	2 6%	
(c) If the <i>Dependent Adults Act</i> provides a prescribed fee schedule, private trustees should be able to take fees in accordance with the fee schedule periodically, without advance authorization from the court.	19 54% 59%	13 37% 41%	3 9%	

RESPONDENTS' COMMENTS

1. Trustee should only be paid for expenses incurred.

2. The fee schedule should provide for a base flat fee on estates up to \$100K capital, plus a sliding percentage fee on greater amounts. Otherwise it is likely that smaller estates for dependent adults will be passed to the Public Trustee.

3. The ability to claim a fee should depend on the value of the estate

4. Examples given about Ontario practice, if the guardian and trustee is the same person, allowing the guardian to decide if trustee could collect more fees or monetary compensation would not make any sense.

5. In my judge-ordered trusteeship it says I'm allowed compensation but it's not specific. I do not take any compensation because it would be depleting his bank account. I have to hire an accountant to balance and check my work.

6. Re (c): should only be with court approval, but could be taken periodically if planned in advance.

7. How do trustees, appointed by the adult when healthy, know what fees are allowed? Do we have to request?

2.9 Public Trustee as trustee

41. Please indicate whether or not you agree with the following statements.	Agree	Do Not Agree	Not Sure	No Opinion
(a) The provisions of the <i>Dependent Adults Act</i> regarding the circumstances, if any, in which the Public Trustee must apply either to be appointed or to have someone else appointed as trustee for an adult are satisfactory and do not require significant modification.	10 27% 38%	16 43% 62%	11 30%	
(b) The provisions of the <i>Dependent Adults Act</i> regarding the circumstances, if any, in which the Public Trustee must accept an appointment as trustee for an adult on the application of a third person are satisfactory and do not require significant modification.	9 26% 39%	14 41% 61%	11 32%	
(c) The <i>Dependent Adults Act</i> should impose a duty on the Public Trustee to investigate allegations that an adult is in need of a trustee and to apply to be appointed trustee if the investigation indicates that the adult is in need of a trustee and that no one else is taking steps to have a trustee appointed.	23 66% 79%	6 17% 21%	6 17%	
(d) The <i>Dependent Adults Act</i> should state that the court should only appoint the Public Trustee as trustee for an adult if there is no other suitable person who is available and willing to be appointed.	24 69% 75%	8 23% 25%	3 9%	

RESPONDENTS' COMMENTS

1. The Public Trustee must be pro-active in protecting the assets of dependent people and in ensuring that these people are not being exploited by relatives and friends.

2. Wording the *Dependent Adults Act* as above, i.e., such that the Public Trustee should only be appointed as the last resort, i.e., "only if there is no other suitable person who is available and willing to be appointed" will give OPT reasons to delay accepting & processing the applications. Not all proposed dependent adult have access to lots of social support or resources to conduct such "in depth" search, i.e., to find out all relevant, involved family members, then to talk to ALL of them regardless where they are living, whether within Alberta or outside Alberta or

outside Canada to reach the decision of whether the proposed dependent adult needs legal trusteeship for protection.

3. The words “if”, “allege”, “believe” could mean anything. The Act doesn’t specify what, if anything, a public trustee must do to investigate circumstances that need addressing (in his opinion). Therefore some situations are not addressed at all!

4. Re (d): the court must ensure that the appointed trustee will act in the best interests of the dependent adult, and may require more frequent reviews of trustee’s actions.