

# The guardianship system essay sample

[Health & Medicine](#), [Disease](#)



The guardianship system is for dependent adults over the age of 18, who need or require continuously support from another adult. Guardianship is a legal mechanism that appoints a substitute decision-maker to act in the best interest of the disabled person who lacks the capacity to manage their own personal decisions (Apolloni & Cooke, 1984, pp. 37). Adults who lack the capacity to make decisions are protected through a spectrum of interventions ranging from advance directives, to assignment of durable power of attorney, and placement under guardianship. According to the Wikipedia an advance directive are documents signed someone to provide healthcare treatment choices.

Likewise, Wikipedia explains that a durable power of attorney for health care allows the person to name someone to act on their behalf (a patient advocate). A guardian is appointed by the probate to serve either as plenary, limited, or temporary guardian of the person, estate or both. The plenary guardianship has the full authority to make informed decisions for the disabled adult and is only used when the disabled truly cannot make any decisions on their own (Iris, 1990, pp5).

The *Dependent Adults Act* of Alberta is a court appointed to provide assistance to these who suffer because of mental disabilities (<http://www.justice.gov>) and may have difficulty making reasonable personal decisions. The guardian appointed under the *Dependent Adults Act* will make the decisions for the disabled adult regarding where the dependent adult should reside, whom the dependent adult should associate with and assist them with day to day decisions including but not limited to their dress and diet (<http://www.justice.gov>).

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## Historical and Social models of disability:

Maggie Shreve (1992) provides a great look into the four social and historical models that pertain to disability.

1. The Moral Model – The Moral model associates disability with sin and shame and often associated with feelings of guilt by those who are disabled. Due to the shame this model of disability causes, families have hidden away disabled family members. This has led to general social ostracism and self hatred. Although this is the oldest model of disability it is not used as much in present day!
2. The Medical Model: Because many disabilities have medical origins, those with disabilities were expected to benefit from the direction of a medical profession. The problems associated with disability, under this model, are deemed to reside within the individual. To that end, society has no responsibility to make a place for persons with disabilities.
3. The Rehabilitation Model: In the same way that the medical model believes medicine is the answer to the disabled, the rehabilitation model views that the disabled need services from rehabilitation professionals that specialize in training, therapy, counseling, or other services to help the disabled make up for the deficiency caused by the particular disability. The current Vocational Rehabilitation system was designed in accordance to this model.
4. The Disability Model: This model sees disability as a normal aspect of life not as a deviance and rejects the notion that those with disabilities are defective. The Disability model has become the center of the

disability rights and has assisted the independent living movements in gaining their strength. This model believes that if disability were more commonly recognized and expected in the way society is environmental designed then it would not seem so abnormal. They also recognize social discrimination as the most significant problem those with disabilities experience.

Many people reject the label “ disabled” to avoid the stigmatization and stereotyping of harsh social reality. As society knows, attitudes and behaviors are mostly inherited. The behaviors and attitudes today toward those with disabilities date back in history when a massive solid foundation was laid on how non-disabled people treated those with disabilities. Society is still trying to break thru that massive solid foundation by gaining new found respect for those with disabilities and have been for over a century.

The Canadian Charter of Rights says that: “ The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society” (<http://en.wikipedia.org>).

The Canadian Disability Rights Movement:

According to ([http://www.disabilityrightsmuseum.ca/about\\_cdrm.php](http://www.disabilityrightsmuseum.ca/about_cdrm.php)), services for those with disabilities developed before the 1970's however, in the 1970's Canadians with disabilities formed organizations and lobby groups for demanding and obtaining equal rights. Ravi Malhotra (2001) says the goal of empowerment is undermined by the fact that disablement is still widely perceived as a personally problem that is caused by the person's

medical impairment. The disability rights movement strived on the notion that disabilities are structural and attitudinal barriers in society that cause discrimination and oppression faced by disabled people.

Sherve (1992) provides information regarding self-help advocacy programs that began being organized to promote independent living for those with disabilities. Disability right groups knew that the best support and guidance a disabled dependent adult would receive was from another disabled person because they had the first hand experience and knowledge to pass on. Another social influence for those with disabilities was the de-medicalization and de-institutional movements. De-medicalization meant removing the involvement of medical professionals from the daily lives of those with disabilities.

Furthermore, Sherve (1992) tells us that disabled persons are not "sick", and they are not dependent on medical professional for every day needs. With the de-medicalization for those with disabilities, personal assistance came about. The personal assistance was a consumer-directed service that empowered the disabled person to recruit, hire, train, manage, and fire their personal assistant in assist them with their everyday functions. To that end, de-institutionalization is along the same concept as de-medicalization. Disabled do not require being institutionalized because they are disabled by a permanent type of condition.

There are four basic components that make up the guardianship program (Appolloni & Cooke, 1984; Casasanto, et al.; 1991; Christie, 1984, Veatch, 1986).

1. The dependent adult has severe and chronic mental disabilities and is not competent to make their own treatment choices, and they will benefit from a guardian. This legal guardian is to serve and protect the disabled dependent adult from alleged abuse, neglect, and exploitation.
2. A responsible guardian will act to promote the welfare of the disabled dependent adult through beneficent actions while substitute decisions are made. The guardian is adhere to the ethical principals and not harm or impose risk of harm in decision making situations where are to be in the dependents adult best interest.
3. In addition, the guardian will NOT make decision in other areas of their life NOT cited in the petition and order from the court.
4. The incompetent person plays a very little significant role in the guardianship process. They do not attend hearings, no are their voices heard in legal representation (Bulcroft et at.; 1991, pp 45)

The ethical principles that occur during the guardian's decision-making or dependent adult and guardian relationship (Stebnick, 1994, pp 69). Ethical dilemmas often occur when the guardian uses their own set of philosophical and moral beliefs to make a decision for the dependent adult (Veatch, 1986, pp 78), this causing one of more ethical principles to be compromised.

“ The ethical principle of autonomy is powerful and relevant in the foundation of the guardianship process” (Howie, et al., 1992, pp47). In order for a person's autonomy to be fulfilled, there must be the presence of all three of the following conditions: (a) voluntaries, (b) competence, and (c) knowledge (Beauchamp & Childress, 1989; Gillett, 1989; Wear & Brahams,

1991). And in order to respect their autonomy a person's capacities and perspectives along with personal views need to be heard.

Some citizens in society believe that the appointment of a legal guardian is a major imposition on a person's autonomy, and some feel that little restrictions on qualifications as to who can be a guardian. The ethical guidelines are often questionable and the courts do lack the resources to monitor all the activities of the guardian (Topolnicki, 1989, pp. 35). However, supported and joint decision making and alternatives to formal legal guardianship are beginning to influence individuals, family's advocates, and law makers. Thus making the ethical issues less as restrictive.

The Guardianship system intersects with individuals, community based organizations such as the PDD (Persons with Developmental Disabilities in Alberta), families, seniors services, the legal system under the Dependent Adults Act, and health service. In addition, guardians are encouraged to be involved in advocacy groups and advocacy in general. All of these intersections provide inputs and outputs (or energy) to the guardianship system.

The office of the Public and Private Guardians is a system that has interrelated parts that are usually perceived as a whole. In the Public Guardian's and Private Guardian's case (both part and full guardian's), the whole is providing decision-making resources on their daily decisions. Self-advocates and families of persons with developmental disabilities are actively pursuing their dreams for independent living, and more.

Although the Alberta Model of Guardianship places a strong emphasis on the least restrictive alternatives for the dependent adult, it is also designed to ensure the needs, rights, and dignity of the disabled adults are recognized and respected within the caring context (Davies, 1995, pp 10). With that said, some still view guardianship as “ an intrusive intervention that usually removed an adult’s basic civil right” (Reynolds, 1989 pp2).

Because the courts define and specify the decisions the guardian will have, the courts determine what the best interest of the disabled persons will be and they ensure these best interest are carried out by the guardian by selecting the decisions the guardian has the authority to make and thus gives the court complete and total control over the disabled persons and the guardian. In addition, the following complete detailed sample of the Dependent Adults Act, gives the exact wordage and requirements of the court and the guardian of the disable. The areas of Guardianship under the dependant adults act:

3) In making an order appointing a guardian, the Court shall specify whether all or any one or more of the following matters relating to the person of the dependent adult are to be subject to the power and authority of the guardian:

(a) to decide where the dependent adult is to live, whether permanently or temporarily;

(b) to decide with whom the dependent adult is to live and with whom the dependent adult is to consort;

(c) to decide whether the dependent adult should engage in social activities



and, if so, the nature and extent of them and related matters;

(d) to decide whether the dependent adult should work and, if so, the nature or type of work, for whom the dependent adult is to work and related matters;

(e) to decide whether the dependent adult should participate in any educational, vocational or other training and, if so, the nature and extent of it and related matters;

(f) to decide whether the dependent adult should apply for any license, permit, approval or other consent or authorization required by law;

(g) to commence, compromise or settle any legal proceeding that does not relate to the estate of the dependent adult and to compromise or settle any proceeding taken against the dependent adult that does not relate to the dependent adult's estate;

(h) to consent to any health care that is in the best interests of the dependent adult;

(i) to make normal day to day decisions on behalf of the dependent adult including the diet and dress of the dependent adult;

Because the guardian has, in some cases, the authority to make all the legal decisions for the disabled adult, the courts are suppose to ensure that a checks and balance is in place to make sure the disabled adult is not be taken advantage of. However, because the the courts lack the resources as well as the interest all activities are not monitored (Topolnicki, 1989, pp5).

As with any major system there are always some opposing views; the Guardianship System is no exception. Most guardianship legislation is based on the assumptions about individuals with developmental disability that were

held in the early 1990's. One of the most seen assumptions is the belief that those with developmental disabilities are incompetent and someone else should be appointed to make their decisions ([http://www. peoplefirstwi. org](http://www.peoplefirstwi.org)). This has created a guardianship system that evolved that overprotects, does not honor the ability of the individual, and ignore the importance of social support (<http://www. peoplefirstwi. org>).

People in Wisconsin have voiced their opinion in the People first Wisconsin advocacy group, that the people with disabilities need a personal guardian's not legal guardianship (<http://www. peoplefirswi. org>). A personal guardian would assist a person with disability to understand, explore, and make good choices. They would help the disabled person find a positive way to make dreams come true and encourage successful ways of living out the choices that they have made.

This advocacy group believes that when “ we strip people with disabilities of their adult rights, we strip them of their personal sense of authority, which only makes them more vulnerable to abuse and exploitation. They don't know how to say “ no” because they don't get the opportunity to make choices for themselves.” They also stress that we “ must “ guard” the rights and personhood of people with disabilities, just as much as we “ guard” their safety.”

This chart provides how disabled adults can survive without legal guardians if the personal guardian only gives little guidance and doesn't make the decisions for the disabled people ([http:// www. peoplefirstwi. org](http://www. peoplefirstwi. org)).

This chart was taken from [www. peoplefirstwi. org](http://www.peoplefirstwi.org).

People with Disabilities must	Personal guardian must
Have people in their lives that know them well and can help them teach other about what is important to them.	Learn how each person with a disability can best consider choices and express preferences.
Have people in their lives who understand they way they express choices and preferences	Present a few positive options, and be prepared to support whatever one the person chooses.
Learn how to ask for help when making tough decisions	Stay connected to the person so you know when important choices are facing the person
Learn how to avoid providing pressure to make quick decisions without being able to ask for help	Intervene most in helping people make a success of the choices they make,

instead of making the  
choice for them.

Have the chance to learn  
how to consider choices,  
and/or get hands-on chance  
to experience different  
options before deciding on  
one.

Recognize there is no  
guarantee things  
would work out  
perfectly if you  
choose for the person.

The People First of Wisconsin also believes that if legal guardianships are needed for some individuals they should be:

1. Limited to only the areas the disabled person's need them.
2. Time-limited to ensure there are regular opportunities for people to regain their rights.
3. Accompanied by training available to the person under guardianship and their support staff about the rights they maintain.
4. Respect personal guardians in people's lives the same way they respect legal guardian now.
5. View the task of teaching decision making skills as equally important as the task of teaching other independent living and self-care skills.
6. Offer the disabled person decision making opportunities and experiences in a thoughtful way and according to individual circumstances.
7. Create choices for the disabled adult.

Guardianship systems are viewed as having evolved to be overprotective, do not honor the ability of the disabled adult to choose and be responsible for their own lives, and ignore the importance of social support; it is also viewed that those disabled adults who are declared incompetent for making their own decisions, lose their status as citizens (<http://www.councilonmr.org>).

The People First Wisconsin advocacy group also believes that society and support agencies must take certain steps to ensure that disabled people survive without legal guardians.

Society must:

1. Crack down on people who abuse or exploit those with disabilities.
2. Create legitimacy for personal guardians in the same way that legitimacy is formed for legal guardians now.
3. Become less focused on legal contracts, more focused on interpersonal relationships.
4. Most importantly: View those with developmental disability as more than eternal children.
5. Support agencies must strive to understand the limits of guardianships and allow the disabled dependent adults the rights they are entitled to even under guardianship systems.

The purpose of a Guardianship System is to provide a legal guardian to protect and make important (not needed) decisions for a disabled adult whom cannot make the decisions for themselves. The Dependent Adults Act of Alberta provides a court appointed guardian to provide assistance to these

who suffer because of mental disabilities (justice. gov) and may have difficulty making reasonable personal decisions.

The guardian appointed under the Dependent Adult Act will make the decisions for the disabled adult regarding where the dependent adult should reside, whom the dependent adult should associate with and assist them with day to day decisions including but not limited to their dress and diet. As seen in the historical and social models of disability, society has come a long way in the treatment and respect of those with disabilities, however, more still needs to be completed and more of society needs to be educated.

The four basic components of the Guardianship System provide a detail look at what exactly a guardian's role should be for matters concerning the disabled adult. In addition; the general and ethical boundaries of the Guardianship System provide a detailed look into a few of the major concerns with the Guardianship System. It is important to understand the input and output energy sources that a Guardianship System provided and receives from society in general.

An in-depth look into what the intended functions of the Guardianship System versus the actual functions provide more knowledge as to if the Guardianship System applies the respectful functions and authority needed to the disabled adults. Finally, it is vitally important to evaluate the opposing views of the Guardianship system to determine if the Guardianship system enhances, maintains, or reduces the rights of disabled adults. With that said, this present study showed ways that the Guardianship system does enhance,

does maintain, and in various ways does even reduce the rights of the disabled adults.

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