



[Français](#)

Substitute Decisions Act, 1992

S.O. 1992, CHAPTER 30

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Note: January 1, 2011 has been named by proclamation as the day on which the amendments made by 2008, c. 14, s. 59 come into force.

Last amendment: 2009, c. 33, Sched. 18, s. 33.

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GENERAL

Interpretation

1. (1) In this Act,

“assessor” means a member of a class of persons who are designated by the regulations as being qualified to do assessments of capacity; (“évaluateur”)

“capable” means mentally capable, and “capacity” has a corresponding meaning; (“capable”, “capacité”)

“controlled-access residence” means premises, other than a facility, where one or more persons live and that are operated for remuneration by a person who controls access to the premises; (“résidence à accès contrôlé”)

“court” means the Superior Court of Justice; (“tribunal”)

“dependant” means a person to whom another has an obligation to provide support; (“personne à charge”)

“facility” means,

- (a) a facility governed or funded under an Act mentioned in the Schedule,

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “facility” is amended by the Statutes of Ontario, 2008, chapter 14, subsection 59 (1) by adding the following clause:

(a.1) a facility that is a supported group living residence under the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008*,

Note: On the day the Statutes of Ontario, 2008, chapter 14, subsection 59 (1) comes

into force, clause (a.1) is repealed and the following substituted:

(a.1) a facility that is a supported group living residence or an intensive support residence under the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008*,

See: 2009, c. 33, Sched. 8, ss. 16, 21 (19).

See: 2008, c. 14, ss. 59 (1), 64.

(b) police detention facilities provided by a municipality under the *Police Services Act*,

(c) a detention facility maintained under section 16.1 of the *Police Services Act*, or

(d) a prescribed facility; (“établissement”)

“incapable” means mentally incapable, and “incapacity” has a corresponding meaning; (“incapable”, “incapacité”)

“partner” means,

(a) Repealed: 2005, c. 5, s. 65 (2).

(b) either of two persons who have lived together for at least one year and have a close personal relationship that is of primary importance in both persons’ lives; (“partenaire”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“psychiatric facility” has the same meaning as in the *Mental Health Act*; (“établissement psychiatrique”)

“regulations” means the regulations made under this Act; (“règlements”)

“spouse” means a person,

(a) to whom the person is married, or

(b) with whom the person is living in a conjugal relationship outside marriage, if the two persons,

(i) have cohabited for at least one year,

(ii) are together the parents of a child, or

(iii) have together entered into a cohabitation agreement under section 53 of the *Family Law Act*; (“conjoint”)

“will” has the same meaning as in the *Succession Law Reform Act*. (“testament”) 1992, c. 30, s. 1 (1); 1996, c. 2, s. 3 (1-5); 2002, c. 17, Sched. F, Table; 2002, c. 18, Sched. A, s. 20 (1, 2); 2005, c. 5, s. 65 (1-3).

(2) Repealed: 2002, c. 18, Sched. A, s. 20 (3).

Relatives

[\(2.1\)](#) Two persons are relatives for the purpose of this Act if they are related by blood, marriage or adoption. 1996, c. 2, s. 3 (6).

Meaning of “explain”

[\(3\)](#) A person whom this Act requires to explain a matter satisfies that requirement by explaining the matter to the best of his or her ability and in a manner that addresses the special needs of the person receiving the explanation, whether that person understands it or not. 1992, c. 30, s. 1 (3); 1996, c. 2, s. 3 (7).

Presumption of capacity

[2. \(1\)](#) A person who is eighteen years of age or more is presumed to be capable of entering into a contract. 1992, c. 30, s. 2 (1).

Same

[\(2\)](#) A person who is sixteen years of age or more is presumed to be capable of giving or refusing consent in connection with his or her own personal care. 1992, c. 30, s. 2 (2).

Exception

[\(3\)](#) A person is entitled to rely upon the presumption of capacity with respect to another person unless he or she has reasonable grounds to believe that the other person is incapable of entering into the contract or of giving or refusing consent, as the case may be. 1992, c. 30, s. 2 (3).

Onus of proof, contracts and gifts

[\(4\)](#) In a proceeding in respect of a contract entered into or a gift made by a person while his or her property is under guardianship, or within one year before the creation of the guardianship, the onus of proof that the other person who entered into the contract or received the gift did not have reasonable grounds to believe the person incapable is on that other person. 1992, c. 30, s. 2 (4).

Counsel for person whose capacity is in issue

[3. \(1\)](#) If the capacity of a person who does not have legal representation is in issue in a proceeding under this Act,

(a) the court may direct that the Public Guardian and Trustee arrange for legal representation to be provided for the person; and

(b) the person shall be deemed to have capacity to retain and instruct counsel. 1992, c. 30, s. 3 (1).

Responsibility for legal fees

[\(2\)](#) If legal representation is provided for a person in accordance with clause (1) (a) and no certificate is issued under the *Legal Aid Services Act, 1998* in connection with the proceeding, the person is responsible for the legal fees. 1992, c. 30, s. 3 (2); 1998, c. 26, s. 108.

Same

[\(3\)](#) Nothing in subsection (2) affects any right of the person to an assessment of a

solicitor's bill under the *Solicitors Act* or other review of the legal fees and, if it is determined that the person is incapable of managing property, the assessment or other review may be sought on behalf of the person by,

- (a) the person's guardian of property; or
- (b) the person's attorney under a continuing power of attorney for property. 2009, c. 33, Sched. 2, s. 71 (1).

PART I PROPERTY

GENERAL

Application of Part

4. This Part applies to decisions on behalf of persons who are at least eighteen years old. 1992, c. 30, s. 4.

Age

5. To exercise a power of decision under this Part on behalf of another person, a person must be at least eighteen years old. 1992, c. 30, s. 5.

Incapacity to manage property

6. A person is incapable of managing property if the person is not able to understand information that is relevant to making a decision in the management of his or her property, or is not able to appreciate the reasonably foreseeable consequences of a decision or lack of decision. 1992, c. 30, s. 6.

CONTINUING POWERS OF ATTORNEY FOR PROPERTY

Continuing power of attorney for property

7. (1) A power of attorney for property is a continuing power of attorney if,

- (a) it states that it is a continuing power of attorney; or
- (b) it expresses the intention that the authority given may be exercised during the grantor's incapacity to manage property. 1996, c. 2, s. 4 (1).

Note: Subsection 7 (1), as re-enacted by the Statutes of Ontario, 1996, chapter 2, subsection 4 (1), applies to powers of attorney given before or after March 29, 1996. See: 1996, c. 2, s. 4 (5).

Same

(2) The continuing power of attorney may authorize the person named as attorney to do on the grantor's behalf anything in respect of property that the grantor could do if capable, except make a will. 1992, c. 30, s. 7 (2).

P.G.T. may be attorney

(3) The continuing power of attorney may name the Public Guardian and Trustee as attorney if his or her consent in writing is obtained before the power of attorney is executed.

1996, c. 2, s. 4 (2).

Two or more attorneys

(4) If the continuing power of attorney names two or more persons as attorneys, the attorneys shall act jointly, unless the power of attorney provides otherwise. 1992, c. 30, s. 7 (4).

Death, etc., of joint attorney

(5) If two or more attorneys act jointly under the continuing power of attorney and one of them dies, becomes incapable of managing property or resigns, the remaining attorney or attorneys are authorized to act, unless the power of attorney provides otherwise. 1992, c. 30, s. 7 (5); 1996, c. 2, s. 4 (3).

Conditions and restrictions

(6) The continuing power of attorney is subject to this Part, and to the conditions and restrictions that are contained in the power of attorney and are consistent with this Act. 1992, c. 30, s. 7 (6).

Postponed effectiveness

(7) The continuing power of attorney may provide that it comes into effect on a specified date or when a specified contingency happens. 1992, c. 30, s. 7 (7).

Form

(7.1) The continuing power of attorney need not be in any particular form. 1996, c. 2, s. 4 (4).

Same

(8) The continuing power of attorney may be in the prescribed form. 1992, c. 30, s. 7 (8).

Capacity to give continuing power of attorney

8. (1) A person is capable of giving a continuing power of attorney if he or she,

- (a) knows what kind of property he or she has and its approximate value;
- (b) is aware of obligations owed to his or her dependants;
- (c) knows that the attorney will be able to do on the person's behalf anything in respect of property that the person could do if capable, except make a will, subject to the conditions and restrictions set out in the power of attorney;
- (d) knows that the attorney must account for his or her dealings with the person's property;
- (e) knows that he or she may, if capable, revoke the continuing power of attorney;
- (f) appreciates that unless the attorney manages the property prudently its value may decline; and
- (g) appreciates the possibility that the attorney could misuse the authority given to him or her. 1992, c. 30, s. 8 (1).

Capacity to revoke

[\(2\)](#) A person is capable of revoking a continuing power of attorney if he or she is capable of giving one. 1992, c. 30, s. 8 (2).

Validity despite incapacity

[9. \(1\)](#) A continuing power of attorney is valid if the grantor, at the time of executing it, is capable of giving it, even if he or she is incapable of managing property. 1992, c. 30, s. 9 (1).

Same

[\(2\)](#) The continuing power of attorney remains valid even if, after executing it, the grantor becomes incapable of giving a continuing power of attorney. 1992, c. 30, s. 9 (2).

Determining incapacity

[\(3\)](#) If the continuing power of attorney provides that it comes into effect when the grantor becomes incapable of managing property but does not provide a method for determining whether that situation has arisen, the power of attorney comes into effect when,

- (a) the attorney is notified in the prescribed form by an assessor that the assessor has performed an assessment of the grantor's capacity and has found that the grantor is incapable of managing property; or
- (b) the attorney is notified that a certificate of incapacity has been issued in respect of the grantor under the *Mental Health Act*. 1996, c. 2, s. 5.

Execution

[10. \(1\)](#) A continuing power of attorney shall be executed in the presence of two witnesses, each of whom shall sign the power of attorney as witness. 1996, c. 2, s. 6 (1).

Persons who shall not be witnesses

[\(2\)](#) The following persons shall not be witnesses:

1. The attorney or the attorney's spouse or partner.
2. The grantor's spouse or partner.
3. A child of the grantor or a person whom the grantor has demonstrated a settled intention to treat as his or her child.
4. A person whose property is under guardianship or who has a guardian of the person.
5. A person who is less than eighteen years old. 1992, c. 30, s. 10 (2).

[\(3\)](#) Repealed: 1996, c. 2, s. 6 (2).

Non-compliance

[\(4\)](#) A continuing power of attorney that does not comply with subsections (1) and (2) is not effective, but the court may, on any person's application, declare the continuing power of attorney to be effective if the court is satisfied that it is in the interests of the grantor or his or her dependants to do so. 1992, c. 30, s. 10 (4); 1996, c. 2, s. 6 (3).

Resignation of attorney

11. (1) An attorney under a continuing power of attorney may resign but, if the attorney has acted under the power of attorney, the resignation is not effective until the attorney delivers a copy of the resignation to,

- (a) the grantor;
- (b) any other attorneys under the power of attorney;
- (c) the person named by the power of attorney as a substitute for the attorney who is resigning, if the power of attorney provides for the substitution of another person; and
- (d) unless the power of attorney provides otherwise, the grantor's spouse or partner and the relatives of the grantor who are known to the attorney and reside in Ontario, if,
 - (i) the attorney is of the opinion that the grantor is incapable of managing property, and
 - (ii) the power of attorney does not provide for the substitution of another person or the substitute is not able and willing to act. 1992, c. 30, s. 11; 1996, c. 2, s. 7 (1).

Exception

(1.1) Clause (1)(d) does not require a copy of the resignation to be delivered to,

- (a) the grantor's spouse, if the grantor and the spouse are living separate and apart as a result of a breakdown of their relationship; or
- (b) a relative of the grantor, if the grantor and the relative are related only by marriage and the grantor and his or her spouse are living separate and apart as a result of a breakdown of their relationship. 1996, c. 2, s. 7 (2); 2005, c. 5, s. 65 (4).

Notice to other persons

(2) An attorney who resigns shall make reasonable efforts to give notice of the resignation to persons with whom the attorney previously dealt on behalf of the grantor and with whom further dealings are likely to be required on behalf of the grantor. 1996, c. 2, s. 7 (3).

Termination

12. (1) A continuing power of attorney is terminated,

- (a) when the attorney dies, becomes incapable of managing property or resigns, unless,
 - (i) another attorney is authorized to act under subsection 7 (5), or
 - (ii) the power of attorney provides for the substitution of another person and that person is able and willing to act;
- (b) Repealed: 1996, c. 2, s. 8 (2).
- (c) when the court appoints a guardian of property for the grantor under section 22;

- (d) when the grantor executes a new continuing power of attorney, unless the grantor provides that there shall be multiple continuing powers of attorney;
- (e) when the power of attorney is revoked;
- (f) when the grantor dies. 1992, c. 30, s. 12 (1); 1996, c. 2, s. 8.

Execution of revocation

(2) The revocation shall be in writing and shall be executed in the same way as a continuing power of attorney. 1992, c. 30, s. 12 (2).

Exercise after termination or invalidity

13. (1) If a continuing power of attorney is terminated or becomes invalid, any subsequent exercise of the power by the attorney is nevertheless valid as between the grantor or the grantor's estate and any person, including the attorney, who acted in good faith and without knowledge of the termination or invalidity. 1992, c. 30, s. 13 (1).

Same, improper execution

(2) If a continuing power of attorney is ineffective because a person listed in subsection 10 (2) witnessed its execution, subsection (1) applies, with necessary modifications. 1992, c. 30, s. 13 (2).

Certain existing powers of attorney preserved

14. Despite the repeal of section 5 of the *Powers of Attorney Act*, by subsection 24 (3) of the *Consent and Capacity Statute Law Amendment Act, 1992*, a power of attorney that is executed on or before the day this Act comes into force or within six months after that day shall be deemed to be a continuing power of attorney for the purposes of this Act if,

- (a) it contains a provision expressly stating that it may be exercised during any subsequent legal incapacity of the grantor, as described in section 5 of the *Powers of Attorney Act*; and
- (b) it is executed in accordance with the *Powers of Attorney Act* and is otherwise valid. 1992, c. 30, s. 14.

STATUTORY GUARDIANS OF PROPERTY

P.G.T. as statutory guardian

15. If a certificate is issued under the *Mental Health Act* certifying that a person who is a patient of a psychiatric facility is incapable of managing property, the Public Guardian and Trustee is the person's statutory guardian of property. 1992, c. 30, s. 15; 1996, c. 2, s. 9.

Assessment of capacity for statutory guardianship

16. (1) A person may request an assessor to perform an assessment of another person's capacity or of the person's own capacity for the purpose of determining whether the Public Guardian and Trustee should become the statutory guardian of property under this section. 1996, c. 2, s. 10.

Form of request

(2) No assessment shall be performed unless the request is in the prescribed form and, if the request is made in respect of another person, the request states that,

- (a) the person requesting the assessment has reason to believe that the other person may be incapable of managing property;
- (b) the person requesting the assessment has made reasonable inquiries and has no knowledge of the existence of any attorney under a continuing power of attorney that gives the attorney authority over all of the other person's property; and
- (c) the person requesting the assessment has made reasonable inquiries and has no knowledge of any spouse, partner or relative of the other person who intends to make an application under section 22 for the appointment of a guardian of property for the other person. 1996, c. 2, s. 10.

Certificate of incapacity

(3) The assessor may issue a certificate of incapacity in the prescribed form if he or she finds that the person is incapable of managing property. 1996, c. 2, s. 10.

Copies

(4) The assessor shall ensure that copies of the certificate of incapacity are promptly given to the incapable person and to the Public Guardian and Trustee. 1996, c. 2, s. 10.

Statutory guardianship

(5) As soon as he or she receives the copy of the certificate, the Public Guardian and Trustee is the person's statutory guardian of property. 1996, c. 2, s. 10.

Information to be given

(6) After becoming a person's statutory guardian of property under subsection (5), the Public Guardian and Trustee shall ensure that the person is informed, in a manner that the Public Guardian and Trustee considers appropriate, that,

- (a) the Public Guardian and Trustee has become the person's statutory guardian of property; and
- (b) the person is entitled to apply to the Consent and Capacity Board for a review of the assessor's finding that the person is incapable of managing property. 1996, c. 2, s. 10.

Termination by attorney

16.1 (1) A statutory guardianship of property is terminated if,

- (a) the incapable person gave a continuing power of attorney before the certificate of incapacity was issued;
- (b) the power of attorney gives the attorney authority over all of the incapable person's property;
- (c) the Public Guardian and Trustee receives,
 - (i) the original power of attorney, or a copy of it that is authenticated in a manner

- satisfactory to the Public Guardian and Trustee,
- (ii) a written undertaking signed by the attorney to act in accordance with the power of attorney, and
 - (iii) proof satisfactory to the Public Guardian and Trustee of the identity of the person named as the attorney in the power of attorney; and
- (d) if someone has replaced the Public Guardian and Trustee as the statutory guardian under section 17, the statutory guardian receives,
- (i) a copy of the power of attorney that is authenticated in a manner satisfactory to the statutory guardian, and
 - (ii) a written undertaking signed by the attorney to act in accordance with the power of attorney. 1996, c. 2, s. 10; 2009, c. 33, Sched. 2, s. 71 (2).

Attorney resigns

[\(2\)](#) If a statutory guardianship of property is terminated under subsection (1) and, within six months after the termination, the power of attorney is terminated under section 12 because of the attorney's resignation, the Public Guardian and Trustee or the person who replaced the Public Guardian and Trustee as statutory guardian under section 17, as the case may be, may elect to resume being the incapable person's statutory guardian of property until another person is appointed as guardian of property under section 17 or 22. 2009, c. 33, Sched. 2, s. 71 (3).

Exception

[\(3\)](#) Subsection (2) does not apply if any of the events described in paragraph 1, 3 or 4 of section 20 has occurred since the termination of the statutory guardianship of property under subsection (1). 2009, c. 33, Sched. 2, s. 71 (3).

Replacement of P.G.T.

[17. \(1\)](#) Any of the following persons may apply to the Public Guardian and Trustee to replace the Public Guardian and Trustee as an incapable person's statutory guardian of property:

1. The incapable person's spouse or partner.
2. A relative of the incapable person.
3. The incapable person's attorney under a continuing power of attorney, if the power of attorney was made before the certificate of incapacity was issued and does not give the attorney authority over all of the incapable person's property.
4. A trust corporation within the meaning of the *Loan and Trust Corporations Act*, if the incapable person has a spouse or partner who consents in writing to the application. 1996, c. 2, s. 11; 2006, c. 19, Sched. B, s. 22 (1).

Form of application

[\(2\)](#) The application shall be in the prescribed form. 1996, c. 2, s. 11.

Management plan

(3) The application shall be accompanied by a management plan for the property in the prescribed form. 1996, c. 2, s. 11.

Appointment

(4) Subject to subsection (6), the Public Guardian and Trustee shall appoint the applicant as the incapable person's statutory guardian of property if the Public Guardian and Trustee is satisfied that the applicant is suitable to manage the property and that the management plan is appropriate. 1996, c. 2, s. 11.

Considerations

(5) The Public Guardian and Trustee shall consider the incapable person's current wishes, if they can be ascertained, and the closeness of the applicant's relationship to the person. 1996, c. 2, s. 11.

Security

(6) The Public Guardian and Trustee may refuse to appoint the applicant unless the applicant provides security, in a manner approved by the Public Guardian and Trustee, for an amount fixed by the Public Guardian and Trustee. 1996, c. 2, s. 11.

Same

(7) If security is required under subsection (6), the court may, on application, order that security be dispensed with, that security be provided in a manner not approved by the Public Guardian and Trustee, or that the amount of security be reduced, and may make its order subject to conditions. 1996, c. 2, s. 11.

Certificate

(8) The Public Guardian and Trustee shall give the person appointed as statutory guardian of property a certificate certifying the appointment. 1996, c. 2, s. 11.

Effect of certificate

(9) The certificate is proof of the guardian's authority. 1996, c. 2, s. 11.

Conditions

(10) The Public Guardian and Trustee may make an appointment under this section subject to conditions specified in the certificate. 1996, c. 2, s. 11.

Two or more guardians

(11) The Public Guardian and Trustee may certify that two or more applicants are joint statutory guardians of property, or that each of them is guardian for a specified part of the property. 1996, c. 2, s. 11.

Duty of guardian

(12) A person who replaces the Public Guardian and Trustee as statutory guardian of property shall, subject to any conditions imposed by the Public Guardian and Trustee or the court, manage the property in accordance with the management plan. 1996, c. 2, s. 11.

Refusal to issue certificate of statutory guardianship

18. (1) If the Public Guardian and Trustee refuses to issue a certificate for a statutory guardian of property under section 17, he or she shall give the applicant reasons, in writing, for the refusal. 1992, c. 30, s. 18 (1); 1996, c. 2, s. 12 (1, 2).

Dispute, application to court

(2) If the applicant disputes the refusal by giving the Public Guardian and Trustee notice in writing, the Public Guardian and Trustee shall apply to the court to decide the matter. 1992, c. 30, s. 18 (2); 1996, c. 2, s. 12 (3).

Review by court

(3) The court shall decide whether the applicant should, in the circumstances, replace the Public Guardian and Trustee. 1992, c. 30, s. 18 (3); 1996, c. 2, s. 12 (4).

Criteria

(4) The court shall take into consideration the incapable person's current wishes, if they can be ascertained, and the closeness of the applicant's relationship to the person. 1996, c. 2, s. 12 (5).

Order

(5) The court may, in its order, impose such conditions on the guardian's powers as it considers appropriate. 1992, c. 30, s. 18 (5).

Death, etc., of statutory guardian

19. (1) If a statutory guardian of property dies, becomes incapable of managing property or gives notice to the Public Guardian and Trustee of his or her resignation, the Public Guardian and Trustee may elect to become the incapable person's statutory guardian until another person is appointed as guardian of property under section 17 or 22. 1996, c. 2, s. 13.

Delivery of accounts, etc.

(2) If a statutory guardian of property gives notice to the Public Guardian and Trustee of his or her resignation, the Public Guardian and Trustee may require the guardian to provide the Public Guardian and Trustee with his or her accounts in respect of the guardianship, any property in his or her possession or control that is subject to the guardianship and any information requested by the Public Guardian and Trustee in respect of the guardianship. 1996, c. 2, s. 13.

Same

(3) Subsection (2) applies with necessary modifications to the personal representative of a statutory guardian of property who dies. 1996, c. 2, s. 13.

Exception, remaining statutory guardian

- (4)** If there is a remaining statutory guardian as described in subsection (5),
- (a) the remaining statutory guardian continues to have power to act; and
 - (b) subsections (1), (2) and (3) do not apply. 2006, c. 19, Sched. B, s. 22 (2).

Same

(5) There is a remaining statutory guardian for the purposes of subsection (4), unless the certificate of statutory guardianship provides otherwise, if the following conditions are satisfied:

1. Before the event described in paragraph 2, there are two or more joint statutory guardians of property.
2. One of the joint statutory guardians of property dies, becomes incapable of managing property or gives notice to the Public Guardian and Trustee of his or her resignation. 2006, c. 19, Sched. B, s. 22 (2).

Termination of statutory guardianship

20. A statutory guardianship of property for a person is terminated if any of the following events occurs:

1. A guardian is appointed for the person by the court under section 22.
 - 1.1 The statutory guardianship is terminated under subsection 16.1 (1), except as provided by subsection 16.1 (2).
2. Notice of the guardian's resignation is given by the guardian to,
 - i. the person, and
 - ii. the Public Guardian and Trustee, if the Public Guardian and Trustee is not the guardian.
3. In the case of a statutory guardianship created under section 15,
 - i. notice is given to the guardian that the certificate of incapacity has been cancelled under section 56 of the *Mental Health Act*,
 - ii. notice is given to the guardian that the person has been discharged, unless the guardian has also received a notice of continuance issued under subsection 57 (2) of the *Mental Health Act*,
 - iii. notice is given to the guardian from an assessor or from a physician who has authority to issue certificates of incapacity under the *Mental Health Act* stating that the assessor or physician has performed an assessment of the person's capacity and is of the opinion that the person is capable of managing property, if the person has been discharged and a notice of continuance was issued under subsection 57 (2) of the *Mental Health Act*,
 - iv. the time for appeal from a decision of the Consent and Capacity Board on an application under section 20.2 of this Act or section 60 of the *Mental Health Act* has expired, if the Board determines that the person is capable of managing property and no appeal is taken, or
 - v. an appeal from a decision of the Consent and Capacity Board on an application under section 20.2 of this Act or section 60 of the *Mental Health Act* is finally disposed of, if an appeal is taken and it is finally determined that the person is

capable of managing property.

4. In the case of a statutory guardianship created under section 16,
 - i. notice is given to the guardian from an assessor stating that the assessor has performed an assessment of the person's capacity and is of the opinion that the person is capable of managing property,
 - ii. the time for appeal from a decision of the Consent and Capacity Board on an application under section 20.2 has expired, if the Board determines that the person is capable of managing property and no appeal is taken, or
 - iii. an appeal from a decision of the Consent and Capacity Board on an application under section 20.2 is finally disposed of, if an appeal is taken and it is finally determined that the person is capable of managing property.
5. The person dies. 1996, c. 2, s. 13; 2009, c. 33, Sched. 2, s. 71 (4).

Assessment of incapacity

20.1 (1) A statutory guardian of property shall, on behalf of the incapable person, assist in arranging an assessment of the person's capacity by an assessor if the assessment is requested by the incapable person and,

- (a) in the case of a statutory guardianship created under section 15, the person has been discharged from the psychiatric facility, a notice of continuance was issued under subsection 57 (2) of the *Mental Health Act*, and six months have elapsed since the notice of continuance was issued; or
- (b) in the case of a statutory guardianship created under section 16, six months have elapsed since the guardianship was created. 1996, c. 2, s. 13.

Limit

(2) Subsection (1) does not require a statutory guardian of property to assist in arranging an assessment if an assessment has been performed in the six months before the request. 1996, c. 2, s. 13.

Application for review of finding of incapacity

20.2 (1) A person who has a statutory guardian of property may apply to the Consent and Capacity Board for a review of a finding that the person is incapable of managing property,

- (a) in the case of a statutory guardianship created under section 15, if the finding was made by an assessor, or by a physician who has authority to issue certificates of incapacity under the *Mental Health Act*, following an assessment of capacity that was performed after a notice of continuance was issued in respect of the person under subsection 57 (2) of the *Mental Health Act*; or
- (b) in the case of a statutory guardianship created under section 16, if the finding,
 - (i) resulted in the issuance of the certificate of incapacity under subsection 16 (3),

or

(ii) was made by an assessor following an assessment of capacity that was performed after the creation of the statutory guardianship. 1996, c. 2, s. 13.

Limit

(2) A person may not make an application under this section if he or she made an application under this section in the previous six months. 1996, c. 2, s. 13.

Time for application

(3) An application under this section must be made within six months after the finding of incapacity was made. 1996, c. 2, s. 13.

Parties

(4) The parties to the application are:

1. The applicant.
2. The assessor or physician who made the finding of incapacity.
3. Any other person whom the Board specifies. 1996, c. 2, s. 13.

Power of Board

(5) The Board may confirm the finding of incapacity or may determine that the person is capable of managing property, and in doing so may substitute its opinion for that of the assessor or physician. 1996, c. 2, s. 13.

Procedure

(6) Sections 73 to 80 of the *Health Care Consent Act, 1996* apply with necessary modifications to an application under this section. 1996, c. 2, s. 13.

Termination by court

20.3 (1) The court may, on application by a person who is subject to a statutory guardianship of property, terminate the statutory guardianship. 1996, c. 2, s. 13.

Suspension

(2) In an application under this section, the court may suspend the powers of the statutory guardian. 1996, c. 2, s. 13.

Procedure

(3) Subsections 69 (0.1), (8) and (9) apply to an application under this section and, except for the purpose of subsection 69 (9), subsection 69 (6) does not apply. 1996, c. 2, s. 13.

P.G.T. to forward notices

21. If the Public Guardian and Trustee receives a notice concerning a statutory guardianship although another person is the guardian, he or she shall ensure that it is promptly forwarded to that person. 1992, c. 30, s. 21.

COURT-APPOINTED GUARDIANS OF PROPERTY

Court appointment of guardian of property

22. (1) The court may, on any person's application, appoint a guardian of property for a person who is incapable of managing property if, as a result, it is necessary for decisions to be made on his or her behalf by a person who is authorized to do so. 1992, c. 30, s. 22 (1).

Same

(2) An application may be made under subsection (1) even though there is a statutory guardian. 1992, c. 30, s. 22 (2).

Prohibition

(3) The court shall not appoint a guardian if it is satisfied that the need for decisions to be made will be met by an alternative course of action that,

- (a) does not require the court to find the person to be incapable of managing property; and
- (b) is less restrictive of the person's decision-making rights than the appointment of a guardian. 1992, c. 30, s. 22 (3).

Procedure

23. Part III (Procedure) applies to applications to appoint guardians of property. 1992, c. 30, s. 23.

Appointment criteria

24. (1) A person who provides health care or residential, social, training or support services to an incapable person for compensation shall not be appointed under section 22 as his or her guardian of property. 1992, c. 30, s. 24 (1); 1996, c. 2, s. 14 (1, 2).

Exception

(2) Subsection (1) does not apply to the incapable person's spouse, partner or relative or to the following persons:

1. Repealed: 1996, c. 2, s. 14 (3).
2. The attorney for personal care.
3. The attorney under a continuing power of attorney. 1992, c. 30, s. 24 (2); 1996, c. 2, s. 14 (3).

P.G.T.

(2.1) The court shall not appoint the Public Guardian and Trustee as a guardian under section 22 unless,

- (a) the application proposes the Public Guardian and Trustee as guardian;
- (b) the application is accompanied by the Public Guardian and Trustee's written consent to the appointment; and
- (c) there is no other suitable person who is available and willing to be appointed. 2006, c. 19, Sched. B, s. 22 (3).

Non-residents

[\(3\)](#) A person who does not reside in Ontario shall not be appointed as a guardian of property unless the person provides security, in a manner approved by the court, for the value of the property. 1992, c. 30, s. 24 (3); 1996, c. 2, s. 14 (5).

Same

[\(4\)](#) The court may order that the requirement for security under subsection (3) does not apply to a person or that the amount required be reduced, and may make its order subject to conditions. 1992, c. 30, s. 24 (4).

Criteria

[\(5\)](#) Except in the case of an application that is being dealt with under section 77 (summary disposition), the court shall consider,

- (a) whether the proposed guardian is the attorney under a continuing power of attorney;
- (b) the incapable person's current wishes, if they can be ascertained; and
- (c) the closeness of the relationship of the applicant to the incapable person and, if the applicant is not the proposed guardian, the closeness of the relationship of the proposed guardian to the incapable person. 1992, c. 30, s. 24 (5); 1996, c. 2, s. 14 (6); 2009, c. 33, Sched. 2, s. 71 (5).

Two or more guardians

[\(6\)](#) The court may, with their consent, appoint two or more persons as joint guardians of property or may appoint each of them as guardian for a specified part of the property. 1992, c. 30, s. 24 (6).

Finding of incapacity

[25. \(1\)](#) An order appointing a guardian of property for a person shall include a finding that the person is incapable of managing property and that, as a result, it is necessary for decisions to be made on his or her behalf by a person who is authorized to do so. 1992, c. 30, s. 25 (1).

Contents of order

- [\(2\)](#) An order appointing a guardian of property may,
- (a) require that the guardian post security in the manner and amount that the court considers appropriate;
 - (b) make the appointment for a limited period as the court considers appropriate;
 - (c) impose such other conditions on the appointment as the court considers appropriate. 1992, c. 30, s. 25 (2).

Exception

[\(3\)](#) Clause (2)(a) does not apply if the guardian is the Public Guardian and Trustee or a trust corporation within the meaning of the *Loan and Trust Corporations Act*. 1992, c. 30, s. 25 (3).

Variation or substitution of appointment order

26. (1) The court may vary an order appointing a guardian of property under section 22 or substitute another person as guardian, on motion in the proceeding in which the guardian was appointed. 1996, c. 2, s. 15.

Who may make motion

(2) A motion under subsection (1) may be made by the guardian, the applicant in the proceeding in which the guardian was appointed, or any person who was entitled under section 69 to be served with notice of that proceeding. 1996, c. 2, s. 15.

Motion to vary

(3) Subsection 69 (2), subsections 69 (5) to (9) and section 77 apply, with necessary modifications, to a motion to vary an order. 1996, c. 2, s. 15.

Motion to substitute

(4) Subsection 69 (1), subsections 69 (5) to (9), subsection 70 (1) and section 77 apply, with necessary modifications, to a motion to substitute another person as guardian. 1996, c. 2, s. 15.

Temporary guardian, court appointment

Serious adverse effects

27. (1) Loss of a significant part of a person's property, or a person's failure to provide necessities of life for himself or herself or for dependants, are serious adverse effects for the purposes of this section. 1992, c. 30, s. 27 (1).

Duty to investigate

(2) The Public Guardian and Trustee shall investigate any allegation that a person is incapable of managing property and that serious adverse effects are occurring or may occur as a result. 1992, c. 30, s. 27 (2).

Extent of investigation

(3) In conducting an investigation under subsection (2), the Public Guardian and Trustee is not required to take any steps that, in his or her opinion, are unnecessary for the purpose of determining whether an application to the court is required under subsection (3.1). 1996, c. 2, s. 16 (1).

Application for temporary guardianship

(3.1) If, as a result of the investigation, the Public Guardian and Trustee has reasonable grounds to believe that a person is incapable of managing property and that the prompt appointment of a temporary guardian of property is required to prevent serious adverse effects, the Public Guardian and Trustee shall apply to the court for an order appointing him or her as temporary guardian of property. 1996, c. 2, s. 16 (1).

Notice

(4) Notice of the application shall be served on the person alleged to be incapable, unless the court dispenses with notice in view of the nature and urgency of the matter. 1992, c. 30, s. 27 (4).

(5) Repealed: 1996, c. 2, s. 16 (2).

Order appointing temporary guardian

(6) The court may by order appoint the Public Guardian and Trustee as temporary guardian of property for a period not exceeding ninety days. 1992, c. 30, s. 27 (6).

Same

(7) The order shall set out the temporary guardian's powers and any conditions imposed on the guardianship. 1992, c. 30, s. 27 (7).

Power of attorney

(8) The order may suspend the powers of any attorney under a continuing power of attorney during the term of the temporary guardianship. 1996, c. 2, s. 16 (3).

Service of order

(9) If the order was made without notice, it shall be served on the person as soon as possible. 1996, c. 2, s. 16 (3).

Termination, variation

(9.1) On motion by the Public Guardian and Trustee or by the person whose property is under guardianship, the court may terminate the guardianship, reduce or extend its term, or otherwise vary the order. 1996, c. 2, s. 16 (3).

Duty if no application made

(10) If the Public Guardian and Trustee conducts an investigation under this section and decides not to make an application under subsection (3.1), the Public Guardian and Trustee shall, within three years,

- (a) destroy all information collected during the investigation and during any previous investigations in respect of the person under this section; and
- (b) notify the person who was alleged to be incapable that,
 - (i) an allegation was made that the person was incapable of managing property and that serious adverse effects were occurring or might occur as a result,
 - (ii) the Public Guardian and Trustee investigated the allegation as required by this Act and decided not to make an application for temporary guardianship, and
 - (iii) the Public Guardian and Trustee has destroyed all information collected during the investigation. 1996, c. 2, s. 16 (4).

Exception

(11) Subsection (10) does not apply if, within three years after the decision is made not to make an application under subsection (3.1),

- (a) another investigation is commenced in respect of the person under this section or section 62; or
- (b) the Public Guardian and Trustee becomes the person's guardian of property or guardian of the person. 1996, c. 2, s. 16 (4).

Termination

28. (1) The court may terminate a guardianship created under section 22, on motion in the proceeding in which the guardian was appointed. 1996, c. 2, s. 17.

Who may make motion

(2) A motion under subsection (1) may be made by the guardian, the applicant in the proceeding in which the guardian was appointed, or any person who was entitled under section 69 to be served with notice of that proceeding. 1996, c. 2, s. 17.

Suspension

29. In a motion to terminate a guardianship or temporary guardianship, the court may suspend the powers of the guardian or temporary guardian. 1996, c. 2, s. 17.

Procedure, termination

30. Part III (Procedure) applies to motions to terminate guardianships of property. 1992, c. 30, s. 30; 1996, c. 2, s. 18.

PROPERTY MANAGEMENT

Powers of guardian

31. (1) A guardian of property has power to do on the incapable person's behalf anything in respect of property that the person could do if capable, except make a will. 1992, c. 30, s. 31 (1).

(2) Repealed: 1996, c. 2, s. 19.

Same

(3) The guardian's powers are subject to this Act and to any conditions imposed by the court. 1992, c. 30, s. 31 (3).

Access to personal information

31.1 Any person who has personal information about an incapable person to which the incapable person would be entitled to have access if capable, including health information and records, shall disclose it to the incapable person's guardian of property on request. 2006, c. 19, Sched. B, s. 22 (4).

Duties of guardian

32. (1) A guardian of property is a fiduciary whose powers and duties shall be exercised and performed diligently, with honesty and integrity and in good faith, for the incapable person's benefit. 1992, c. 30, s. 32 (1).

Personal comfort and well-being

(1.1) If the guardian's decision will have an effect on the incapable person's personal comfort or well-being, the guardian shall consider that effect in determining whether the decision is for the incapable person's benefit. 1996, c. 2, s. 20 (1).

Personal care

(1.2) A guardian shall manage a person's property in a manner consistent with decisions concerning the person's personal care that are made by the person who has authority to make those decisions. 1996, c. 2, s. 20 (1).

Exception

(1.3) Subsection (1.2) does not apply in respect of a decision concerning the person's personal care if the decision's adverse consequences in respect of the person's property significantly outweigh the decision's benefits in respect of the person's personal care. 1996, c. 2, s. 20 (1).

Explanation

(2) The guardian shall explain to the incapable person what the guardian's powers and duties are. 1992, c. 30, s. 32 (2).

Participation

(3) A guardian shall encourage the incapable person to participate, to the best of his or her abilities, in the guardian's decisions about the property. 1992, c. 30, s. 32 (3).

Family and friends

(4) The guardian shall seek to foster regular personal contact between the incapable person and supportive family members and friends of the incapable person. 1992, c. 30, s. 32 (4).

Consultation

- (5) The guardian shall consult from time to time with,
- (a) supportive family members and friends of the incapable person who are in regular personal contact with the incapable person; and
 - (b) the persons from whom the incapable person receives personal care. 1992, c. 30, s. 32 (5).

Accounts

(6) A guardian shall, in accordance with the regulations, keep accounts of all transactions involving the property. 1996, c. 2, s. 20 (2).

Standard of care

(7) A guardian who does not receive compensation for managing the property shall exercise the degree of care, diligence and skill that a person of ordinary prudence would exercise in the conduct of his or her own affairs. 1992, c. 30, s. 32 (7).

Same

(8) A guardian who receives compensation for managing the property shall exercise the degree of care, diligence and skill that a person in the business of managing the property of others is required to exercise. 1992, c. 30, s. 32 (8).

P.G.T.

(9) Subsection (8) applies to the Public Guardian and Trustee. 1992, c. 30, s. 32 (9).

Management plan, policies of P.G.T.

(10) A guardian shall act in accordance with the management plan established for the property, if the guardian is not the Public Guardian and Trustee, or with the policies of the Public Guardian and Trustee, if he or she is the guardian. 1992, c. 30, s. 32 (10).

Amendment of plan

(11) If there is a management plan, it may be amended from time to time with the Public Guardian and Trustee's approval. 1992, c. 30, s. 32 (11).

Application of *Trustee Act*

(12) The *Trustee Act* does not apply to the exercise of a guardian's powers or the performance of a guardian's duties. 1992, c. 30, s. 32 (12).

Liability of guardian

33. (1) A guardian of property is liable for damages resulting from a breach of the guardian's duty. 1992, c. 30, s. 33 (1).

Same

(2) If the court is satisfied that a guardian of property who has committed a breach of duty has nevertheless acted honestly, reasonably and diligently, it may relieve the guardian from all or part of the liability. 1992, c. 30, s. 33 (2).

Exception, corporate directors

(3) Subsection (2) does not apply to a guardian acting as a director of a corporation in which the incapable person is a shareholder unless the guardian has acted honestly, reasonably and diligently with a view to the best interests of the corporation. 2006, c. 34, s. 24 (1).

Breach of duty

(4) For the purposes of this section, a breach of duty includes a breach of a duty or other obligation by a guardian acting as a director of a corporation, whether arising in equity, at common law or by statute. 2006, c. 34, s. 24 (1).

Will

33.1 A guardian of property shall make reasonable efforts to determine,

- (a) whether the incapable person has a will; and
- (b) if the incapable person has a will, what the provisions of the will are. 1996, c. 2, s. 21.

Property in another person's control

33.2 (1) A person who has custody or control of property belonging to an incapable person shall,

- (a) provide the incapable person's guardian of property with any information requested by the guardian that concerns the property and that is known to the person who has custody or control of the property; and
- (b) deliver the property to the incapable person's guardian of property when required by the guardian. 1996, c. 2, s. 21.

Property includes will

(2) For the purposes of subsection (1), the property belonging to a person includes the person's will. 1996, c. 2, s. 21.

Copies of documents

[\(3\)](#) A person who has custody or control of any document relating to an incapable person's property that was signed by or given to the incapable person shall, on request, provide the incapable person's guardian of property with a copy of the document. 1996, c. 2, s. 21.

Existing corporate debts and liabilities

[33.3 \(1\)](#) Despite any other Act, where a person who is acting as the guardian of property under this Act becomes the director of a corporation by reason of acting in that capacity, the guardian is not liable as a director for any debt or other liability or obligation of the corporation in existence at the time the guardian became a director. 2006, c. 34, s. 24 (2).

Estate remains liable

[\(2\)](#) Nothing in this section affects the liability of the estate on whose behalf a guardian is acting with respect to any debt or other liability or obligation of the corporation. 2006, c. 34, s. 24 (2).

Completion of transactions

[34.](#) A guardian of property has power to complete a transaction that the incapable person entered into before becoming incapable. 1992, c. 30, s. 34.

P.G.T., powers of executor

[35. \(1\)](#) If the Public Guardian and Trustee is the guardian of property for an incapable person immediately before the person's death, the Public Guardian and Trustee may, but need not, exercise the powers of an executor to whom the incapable person's property is given in trust for the payment of debts and the distribution of the residue, until notified of another person's appointment as personal representative. 2009, c. 33, Sched. 2, s. 71 (6).

Same

[\(2\)](#) If the Public Guardian and Trustee exercises powers under subsection (1), it may be with respect to all of the property or such portion of the property as the Public Guardian and Trustee determines. 2009, c. 33, Sched. 2, s. 71 (6).

Same

[\(3\)](#) If the Public Guardian and Trustee exercises powers under subsection (1) only with respect to a portion of the property, the duties and responsibilities of the Public Guardian and Trustee in respect of the property are limited to that portion. 2009, c. 33, Sched. 2, s. 71 (6).

Disposition of property given by will

[35.1 \(1\)](#) A guardian of property shall not dispose of property that the guardian knows is subject to a specific testamentary gift in the incapable person's will. 1996, c. 2, s. 22.

Application

[\(2\)](#) Subsection (1) does not apply in respect of a specific testamentary gift of money. 1996, c. 2, s. 22.

Permitted dispositions

[\(3\)](#) Despite subsection (1),

- (a) the guardian may dispose of the property if the disposition of that property is necessary to comply with the guardian's duties; or
- (b) the guardian may make a gift of the property to the person who would be entitled to it under the will, if the gift is authorized by section 37. 1996, c. 2, s. 22.

Proceeds of disposition

36. (1) The doctrine of ademption does not apply to property that is subject to a specific testamentary gift and that a guardian of property disposes of under this Act, and anyone who would have acquired a right to the property on the death of the incapable person is entitled to receive from the residue of the estate the equivalent of a corresponding right in the proceeds of the disposition of the property, without interest. 1996, c. 2, s. 23.

If residue insufficient

(2) If the residue of the incapable person's estate is not sufficient to pay all entitlements under subsection (1) in full, the persons entitled under subsection (1) shall share the residue in amounts proportional to the amounts to which they would otherwise have been entitled. 1996, c. 2, s. 23.

Will prevails

(3) Subsections (1) and (2) are subject to a contrary intention in the incapable person's will. 1996, c. 2, s. 23.

Proof of P.G.T. guardianship

36.1 A recital, in a document executed by the Public Guardian and Trustee, that the Public Guardian and Trustee is the incapable person's guardian of property under this Act is proof of the facts recited, in the absence of evidence to the contrary. 1994, c. 27, s. 62 (2).

Required expenditures

37. (1) A guardian of property shall make the following expenditures from the incapable person's property:

1. The expenditures that are reasonably necessary for the person's support, education and care.
2. The expenditures that are reasonably necessary for the support, education and care of the person's dependants.
3. The expenditures that are necessary to satisfy the person's other legal obligations. 1992, c. 30, s. 37 (1).

Guiding principles

(2) The following rules apply to expenditures under subsection (1):

1. The value of the property, the accustomed standard of living of the incapable person and his or her dependants and the nature of other legal obligations shall be taken into account.
2. Expenditures under paragraph 2 may be made only if the property is and will remain

sufficient to provide for expenditures under paragraph 1.

3. Expenditures under paragraph 3 may be made only if the property is and will remain sufficient to provide for expenditures under paragraphs 1 and 2. 1992, c. 30, s. 37 (2).

Optional expenditures

(3) The guardian may make the following expenditures from the incapable person's property:

1. Gifts or loans to the person's friends and relatives.
2. Charitable gifts. 1992, c. 30, s. 37 (3).

Guiding principles

(4) The following rules apply to expenditures under subsection (3):

1. They may be made only if the property is and will remain sufficient to satisfy the requirements of subsection (1).
2. Gifts or loans to the incapable person's friends or relatives may be made only if there is reason to believe, based on intentions the person expressed before becoming incapable, that he or she would make them if capable.
3. Charitable gifts may be made only if,
 - i. the incapable person authorized the making of charitable gifts in a power of attorney executed before becoming incapable, or
 - ii. there is evidence that the person made similar expenditures when capable.
4. If a power of attorney executed by the incapable person before becoming incapable contained instructions with respect to the making of gifts or loans to friends or relatives or the making of charitable gifts, the instructions shall be followed, subject to paragraphs 1, 5 and 6.
5. A gift or loan to a friend or relative or a charitable gift shall not be made if the incapable person expresses a wish to the contrary.
6. The total amount or value of charitable gifts shall not exceed the lesser of,
 - i. 20 per cent of the income of the property in the year in which the gifts are made, and
 - ii. the maximum amount or value of charitable gifts provided for in a power of attorney executed by the incapable person before becoming incapable. 1992, c. 30, s. 37 (4).

Increase, charitable gifts

(5) The court may authorize the guardian to make a charitable gift that does not comply with paragraph 6 of subsection (4),

- (a) on motion by the guardian in the proceeding in which the guardian was appointed,

if the guardian was appointed under section 22 or 27; or

(b) on application, if the guardian is the statutory guardian of property. 1996, c. 2, s. 24.

Expenditures for person's benefit

(6) Expenditures made under this section shall be deemed to be for the incapable person's benefit. 1992, c. 30, s. 37 (6).

Attorney under continuing power of attorney

38. (1) Section 32, except subsections (10) and (11), and sections 33, 33.1, 33.2, 34, 35.1, 36 and 37 also apply, with necessary modifications, to an attorney acting under a continuing power of attorney if the grantor is incapable of managing property or the attorney has reasonable grounds to believe that the grantor is incapable of managing property. 1992, c. 30, s. 38; 1996, c. 2, s. 25 (1).

Authority under subs. 37 (5)

(2) An attorney under a continuing power of attorney shall make an application to the court to obtain the authority referred to in subsection 37 (5). 1996, c. 2, s. 25 (2).

Directions from court

39. (1) If an incapable person has a guardian of property or an attorney under a continuing power of attorney, the court may give directions on any question arising in connection with the guardianship or power of attorney. 1996, c. 2, s. 26; 2006, c. 19, Sched. B, s. 22 (5).

Form of request

(2) A request for directions shall be made,

(a) on application, if no guardian of property has been appointed under section 22 or 27; or

(b) on motion in the proceeding in which the guardian was appointed, if a guardian of property has been appointed under section 22 or 27. 1996, c. 2, s. 26.

Applicant; moving party

(3) An application or motion under this section may be made by the incapable person's guardian of property, attorney under a continuing power of attorney, dependant, guardian of the person or attorney under a power of attorney for personal care, by the Public Guardian and Trustee, or by any other person with leave of the court. 1996, c. 2, s. 26.

Order

(4) The court may by order give such directions as it considers to be for the benefit of the person and his or her dependants and consistent with this Act. 1996, c. 2, s. 26.

Variation of order

(5) The court may, on motion by a person referred to in subsection (3), vary the order. 1996, c. 2, s. 26.

Compensation

40. (1) A guardian of property or attorney under a continuing power of attorney may take annual compensation from the property in accordance with the prescribed fee scale. 1992, c. 30, s. 40 (1).

Same

(2) The compensation may be taken monthly, quarterly or annually. 1992, c. 30, s. 40 (2).

Same

(3) The guardian or attorney may take an amount of compensation greater than the prescribed fee scale allows,

- (a) in the case where the Public Guardian and Trustee is not the guardian or attorney, if consent in writing is given by the Public Guardian and Trustee and by the incapable person's guardian of the person or attorney under a power of attorney for personal care, if any; or
- (b) in the case where the Public Guardian and Trustee is the guardian or attorney, if the court approves. 1996, c. 2, s. 27.

Effect of power of attorney

(4) Subsections (1) to (3) are subject to provisions respecting compensation contained in a continuing power of attorney executed by the incapable person if,

- (a) the compensation is taken by the attorney under the power of attorney; or
- (b) the compensation is taken by a guardian of property who was the incapable person's attorney under the power of attorney. 1992, c. 30, s. 40 (4).

41. Repealed: 1996, c. 2, s. 28.

Passing of accounts

42. (1) The court may, on application, order that all or a specified part of the accounts of an attorney or guardian of property be passed. 1992, c. 30, s. 42 (1).

Attorney's accounts

(2) An attorney, the grantor or any of the persons listed in subsection (4) may apply to pass the attorney's accounts. 1992, c. 30, s. 42 (2).

Guardian's accounts

(3) A guardian of property, the incapable person or any of the persons listed in subsection (4) may apply to pass the accounts of the guardian of property. 1992, c. 30, s. 42 (3).

Others entitled to apply

(4) The following persons may also apply:

1. The grantor's or incapable person's guardian of the person or attorney for personal care.
2. A dependant of the grantor or incapable person.

3. The Public Guardian and Trustee.
4. The Children's Lawyer.
5. A judgment creditor of the grantor or incapable person.
6. Any other person, with leave of the court. 1992, c. 30, s. 42 (4); 1994, c. 27, s. 43 (2).

P.G.T. a party

(5) If the Public Guardian and Trustee is the applicant or the respondent, the court shall grant the application, unless it is satisfied that the application is frivolous or vexatious. 1992, c. 30, s. 42 (5).

Filing of accounts

(6) The accounts shall be filed in the court office and the procedure in the passing of the accounts is the same and has the same effect as in the passing of executors' and administrators' accounts. 1992, c. 30, s. 42 (6).

Powers of court

(7) In an application for the passing of an attorney's accounts the court may, on motion or on its own initiative,

- (a) direct the Public Guardian and Trustee to bring an application for guardianship of property;
- (b) suspend the power of attorney pending the determination of the application;
- (c) appoint the Public Guardian and Trustee or another person to act as guardian of property pending the determination of the application;
- (d) order an assessment of the grantor of the power of attorney under section 79 to determine his or her capacity; or
- (e) order that the power of attorney be terminated. 1992, c. 30, s. 42 (7).

Same

(8) In an application for the passing of the accounts of a guardian of property the court may, on motion or on its own initiative,

- (a) adjust the guardian's compensation in accordance with the value of the services performed;
- (b) suspend the guardianship pending the determination of the application;
- (c) appoint the Public Guardian and Trustee or another person to act as guardian of property pending the determination of the application; or
- (d) order that the guardianship be terminated. 1992, c. 30, s. 42 (8).

**PART II
THE PERSON**

GENERAL

Application of Part

43. This Part applies to decisions on behalf of persons who are at least sixteen years old. 1992, c. 30, s. 43.

Age

44. To exercise a power of decision under this Part on behalf of another person, a person must be at least sixteen years old. 1992, c. 30, s. 44.

Incapacity for personal care

45. A person is incapable of personal care if the person is not able to understand information that is relevant to making a decision concerning his or her own health care, nutrition, shelter, clothing, hygiene or safety, or is not able to appreciate the reasonably foreseeable consequences of a decision or lack of decision. 1992, c. 30, s. 45; 1996, c. 2, s. 29.

POWERS OF ATTORNEY FOR PERSONAL CARE

Power of attorney for personal care

46. (1) A person may give a written power of attorney for personal care, authorizing the person or persons named as attorneys to make, on the grantor's behalf, decisions concerning the grantor's personal care. 1992, c. 30, s. 46 (1).

P.G.T. may be attorney

(2) The power of attorney may name the Public Guardian and Trustee as attorney if his or her consent in writing is obtained before the power of attorney is executed. 1996, c. 2, s. 30 (1).

Prohibition

(3) A person may not act as an attorney under a power of attorney for personal care, unless the person is the grantor's spouse, partner or relative, if the person,

- (a) provides health care to the grantor for compensation; or
- (b) provides residential, social, training or support services to the grantor for compensation. 1992, c. 30, s. 46 (3); 1996, c. 2, s. 30 (2, 3).

Two or more attorneys

(4) If the power of attorney names two or more persons as attorneys, the attorneys shall act jointly, unless the power of attorney provides otherwise. 1992, c. 30, s. 46 (4).

Death, etc., of joint attorney

(5) If two or more attorneys act jointly under the power of attorney and one of them dies, becomes incapable of personal care or resigns, the remaining attorney or attorneys are authorized to act, unless the power of attorney provides otherwise. 1992, c. 30, s. 46 (5); 1996, c. 2, s. 30 (4).

Conditions and restrictions

(6) The power of attorney is subject to this Part, and to the conditions and restrictions

that are contained in the power of attorney and are consistent with this Act. 1992, c. 30, s. 46 (6).

Instructions

(7) The power of attorney may contain instructions with respect to the decisions the attorney is authorized to make. 1992, c. 30, s. 46 (7).

Form

(8) The power of attorney need not be in any particular form. 1996, c. 2, s. 30 (5).

Same

(9) The power of attorney may be in the prescribed form. 1992, c. 30, s. 46 (9).

(10) Repealed: 1996, c. 2, s. 30 (6).

(11) Repealed: 1996, c. 2, s. 30 (6).

(12) Repealed: 1996, c. 2, s. 30 (6).

Capacity to give power of attorney for personal care

47. (1) A person is capable of giving a power of attorney for personal care if the person,

(a) has the ability to understand whether the proposed attorney has a genuine concern for the person's welfare; and

(b) appreciates that the person may need to have the proposed attorney make decisions for the person. 1992, c. 30, s. 47 (1).

Validity

(2) A power of attorney for personal care is valid if, at the time it was executed, the grantor was capable of giving it even if the grantor is incapable of personal care. 1992, c. 30, s. 47 (2).

Capacity to revoke

(3) A person is capable of revoking a power of attorney for personal care if he or she is capable of giving one. 1992, c. 30, s. 47 (3).

Capacity to give instructions

(4) Instructions contained in a power of attorney for personal care with respect to a decision the attorney is authorized to make are valid if, at the time the power of attorney was executed, the grantor had the capacity to make the decision. 1992, c. 30, s. 47 (4).

Execution

48. (1) A power of attorney for personal care shall be executed in the presence of two witnesses, each of whom shall sign the power of attorney as witness. 1996, c. 2, s. 31 (1).

Persons who shall not be witnesses

(2) The persons referred to in subsection 10 (2) shall not be witnesses. 1992, c. 30, s. 48 (2).

(3) Repealed: 1996, c. 2, s. 31 (2).

Non-compliance

(4) A power of attorney for personal care that does not comply with subsections (1) and (2) is not effective, but the court may, on any person's application, declare the power of attorney for personal care to be effective if the court is satisfied that it is in the grantor's interests to do so. 1992, c. 30, s. 48 (4); 1996, c. 2, s. 31 (3).

When power of attorney effective

49. (1) A provision in a power of attorney for personal care that confers authority to make a decision concerning the grantor's personal care is effective to authorize the attorney to make the decision if,

- (a) the *Health Care Consent Act, 1996* applies to the decision and that Act authorizes the attorney to make the decision; or
- (b) the *Health Care Consent Act, 1996* does not apply to the decision and the attorney has reasonable grounds to believe that the grantor is incapable of making the decision, subject to any condition in the power of attorney that prevents the attorney from making the decision unless the fact that the grantor is incapable of personal care has been confirmed. 1996, c. 2, s. 32 (1).

Method for confirmation

(2) A power of attorney that contains a condition described in clause (1) (b) may specify the method for confirming whether the grantor is incapable of personal care and, if no method is specified, that fact may be confirmed by notice to the attorney in the prescribed form from an assessor stating that the assessor has performed an assessment of the grantor's capacity and has found that the grantor is incapable of personal care. 1996, c. 2, s. 32 (1).

Instructions to assessor

(3) A power of attorney that contains a condition described in clause (1) (b) may require an assessor who performs an assessment of the grantor's capacity to consider factors described in the power of attorney. 1996, c. 2, s. 32 (1).

Application

(4) This section applies to powers of attorney given before or after the coming into force of section 32 of the *Advocacy, Consent and Substitute Decisions Statute Law Amendment Act, 1996*. 1996, c. 2, s. 32 (1).

Special provisions, use of force

50. (1) A power of attorney for personal care may contain one or more of the provisions described in subsection (2), but a provision is not effective unless both of the following circumstances exist:

1. At the time the power of attorney was executed or within 30 days afterwards, the grantor made a statement in the prescribed form indicating that he or she understood the effect of the provision and of subsection (4).

2. Within 30 days after the power of attorney was executed, an assessor made a statement in the prescribed form,
 - i. indicating that, after the power of attorney was executed, the assessor performed an assessment of the grantor's capacity,
 - ii. stating the assessor's opinion that, at the time of the assessment, the grantor was capable of personal care and was capable of understanding the effect of the provision and of subsection (4), and
 - iii. setting out the facts on which the opinion is based. 1996, c. 2, s. 32 (1).

List of provisions

(2) The provisions referred to in subsection (1) are:

1. A provision that authorizes the attorney and other persons under the direction of the attorney to use force that is necessary and reasonable in the circumstances,
 - i. to determine whether the grantor is incapable of making a decision to which the *Health Care Consent Act, 1996* applies,
 - ii. to confirm, in accordance with subsection 49 (2), whether the grantor is incapable of personal care, if the power of attorney contains a condition described in clause 49 (1) (b), or
 - iii. to obtain an assessment of the grantor's capacity by an assessor in any other circumstances described in the power of attorney.
2. A provision that authorizes the attorney and other persons under the direction of the attorney to use force that is necessary and reasonable in the circumstances to take the grantor to any place for care or treatment, to admit the grantor to that place and to detain and restrain the grantor in that place during the care or treatment.
3. A provision that waives the grantor's right to apply to the Consent and Capacity Board under sections 32, 50 and 65 of the *Health Care Consent Act, 1996* for a review of a finding of incapacity that applies to a decision to which that Act applies. 1996, c. 2, s. 32 (1).

Conditions and restrictions

(3) A provision described in subsection (2) that is contained in a power of attorney for personal care is subject to any conditions and restrictions contained in the power of attorney that are consistent with this Act. 1996, c. 2, s. 32 (1).

Revocation

(4) If a provision described in subsection (2) is contained in a power of attorney for personal care and both of the circumstances described in subsection (1) exist, the power of attorney may be revoked only if, within 30 days before the revocation is executed, an assessor performed an assessment of the grantor's capacity and made a statement in the prescribed form,

- (a) indicating that, on a date specified in the statement, the assessor performed an assessment of the grantor's capacity;
- (b) stating the assessor's opinion that, at the time of the assessment, the grantor was capable of personal care; and
- (c) setting out the facts on which the opinion is based. 1996, c. 2, s. 32 (1).

Use of force

[\(5\)](#) No action lies against an attorney, a police services board, a police officer or any other person arising from the use of force that is authorized by a provision described in subsection (2) that is effective under subsection (1). 1996, c. 2, s. 32 (1).

Note: If a power of attorney for personal care was accepted for registration under section 50 before March 29, 1996, the power of attorney shall be deemed to contain all the provisions described in subsection 50 (2), as re-enacted by the Statutes of Ontario, 1996, chapter 2, subsection 32 (1), and both of the circumstances described in subsection 50 (1), as re-enacted by the Statutes of Ontario, 1996, chapter 2, subsection 32 (1), shall be deemed to exist in respect of each provision. See: 1996, c. 2, s. 32 (2).

Assessment of capacity

[51. \(1\)](#) The attorney under a power of attorney for personal care shall, on the request of and on behalf of the grantor, assist in arranging an assessment of the grantor's capacity by an assessor. 1996, c. 2, s. 32 (1).

Limit

[\(2\)](#) Subsection (1) does not require an attorney to assist in arranging an assessment if an assessment has been performed in the six months before the request. 1996, c. 2, s. 32 (1).

Resignation of attorney

[52. \(1\)](#) An attorney under a power of attorney for personal care may resign but, if the attorney has acted under the power of attorney, the resignation is not effective until the attorney delivers a copy of the resignation to,

- (a) the grantor;
- (b) any other attorneys under the power of attorney;
- (c) the person named by the power of attorney as a substitute for the attorney who is resigning, if the power of attorney provides for the substitution of another person; and
- (d) unless the power of attorney provides otherwise, the grantor's spouse or partner and the relatives of the grantor who are known to the attorney and reside in Ontario, if the power of attorney does not provide for the substitution of another person or the substitute is not able and willing to act. 1992, c. 30, s. 52; 1996, c. 2, s. 33 (1).

Exception

[\(1.1\)](#) Clause (1) (d) does not require a copy of the resignation to be delivered to,

- (a) the grantor's spouse, if the grantor and the spouse are living separate and apart as a result of a breakdown of their relationship; or
- (b) a relative of the grantor, if the grantor and the relative are related only by marriage and the grantor and his or her spouse are living separate and apart as a result of a breakdown of their relationship. 1996, c. 2, s. 33 (2); 2005, c. 5, s. 65 (5).

Notice to other persons

(2) An attorney who resigns shall make reasonable efforts to give notice of the resignation to persons with whom the attorney previously dealt on behalf of the grantor and with whom further dealings are likely to be required on behalf of the grantor. 1996, c. 2, s. 33 (3).

Termination

53. (1) A power of attorney for personal care is terminated,

- (a) when the attorney dies, becomes incapable of personal care or resigns, unless,
 - (i) another attorney is authorized to act under subsection 46 (5), or
 - (ii) the power provides for the substitution of another person and that person is able and willing to act;
- (b) when the court appoints a guardian for the grantor under section 55;
- (c) when the grantor executes a new power of attorney for personal care, unless the grantor provides that there shall be multiple powers of attorney for personal care;
- (d) when the power of attorney is revoked. 1992, c. 30, s. 53 (1); 1996, c. 2, s. 34 (1, 2).

Execution of revocation

(2) A revocation shall be in writing and shall be executed in the same way as a power of attorney for personal care. 1992, c. 30, s. 53 (2).

(3) Repealed: 1996, c. 2, s. 34 (3).

54. Repealed: 1996, c. 2, s. 35.

COURT-APPOINTED GUARDIANS OF THE PERSON

Court appointment of guardian of the person

55. (1) The court may, on any person's application, appoint a guardian of the person for a person who is incapable of personal care and, as a result, needs decisions to be made on his or her behalf by a person who is authorized to do so. 1992, c. 30, s. 55 (1).

Prohibition

(2) The court shall not appoint a guardian if it is satisfied that the need for decisions to be made will be met by an alternative course of action that,

- (a) does not require the court to find the person to be incapable of personal care; and
- (b) is less restrictive of the person's decision-making rights than the appointment of a

guardian. 1992, c. 30, s. 55 (2).

Procedure, court-ordered appointments

56. Part III (Procedure) applies to applications to appoint guardians of the person. 1992, c. 30, s. 56.

Appointment criteria

57. (1) A person who provides health care or residential, social, training or support services to an incapable person for compensation shall not be appointed under section 55 as his or her guardian of the person. 1992, c. 30, s. 57 (1); 1996, c. 2, s. 36 (1, 2).

Exception

(2) Subsection (1) does not apply to the incapable person's spouse, partner or relative or to the following persons:

1. The incapable person's guardian of property.
2. The attorney for personal care.
3. The attorney under a continuing power of attorney for property. 1992, c. 30, s. 57 (2).

Exception

(2.1) Subsection (1) does not apply to a person if the court is satisfied that there is no other suitable person who is available and willing to be appointed. 1996, c. 2, s. 36 (3).

P.G.T.

(2.2) The court shall not appoint the Public Guardian and Trustee as a guardian under section 55 unless,

- (a) the application proposes the Public Guardian and Trustee as guardian;
- (b) the application is accompanied by the Public Guardian and Trustee's written consent to the appointment; and
- (c) there is no other suitable person who is available and willing to be appointed. 2006, c. 19, Sched. B, s. 22 (6).

Criteria

(3) Except in the case of an application that is being dealt with under section 77 (summary disposition), the court shall consider,

- (a) whether the proposed guardian is the attorney under a continuing power of attorney for property;
- (b) the incapable person's current wishes, if they can be ascertained; and
- (c) the closeness of the relationship of the applicant to the incapable person and, if the applicant is not the proposed guardian, the closeness of the relationship of the proposed guardian to the incapable person. 1992, c. 30, s. 57 (3); 1996, c. 2, s. 36 (4); 2009, c. 33, Sched. 2, s. 71 (7).

Two or more guardians

[\(4\)](#) The court may, with their consent, appoint two or more persons as joint guardians of the person or may appoint each of them as guardian in respect of a specified period. 1992, c. 30, s. 57 (4).

Finding of incapacity

[58. \(1\)](#) An order appointing a guardian of the person shall include a finding that the person is incapable in respect of the functions referred to in section 45, or in respect of some of them, and, as a result, needs decisions to be made on his or her behalf by a person who is authorized to do so. 1992, c. 30, s. 58 (1).

Contents of order

- [\(2\)](#) An order appointing a guardian may,
- (a) make the appointment for a limited period as the court considers appropriate;
 - (b) impose such other conditions on the appointment as the court considers appropriate.
- 1992, c. 30, s. 58 (2).

Full or partial guardianship

[\(3\)](#) The order shall specify whether the guardianship is full or partial. 1992, c. 30, s. 58 (3).

Full guardianship

[59. \(1\)](#) The court may make an order for full guardianship of the person only if the court finds that the person is incapable in respect of all the functions referred to in section 45. 1992, c. 30, s. 59 (1).

Powers of guardian

- [\(2\)](#) Under an order for full guardianship, the guardian may,
- (a) exercise custodial power over the person under guardianship, determine his or her living arrangements and provide for his or her shelter and safety;
 - (b) be the person's litigation guardian, except in respect of litigation that relates to the person's property or to the guardian's status or powers;
 - (c) settle claims and commence and settle proceedings on the person's behalf, except claims and proceedings that relate to the person's property or to the guardian's status or powers;
 - (d) have access to personal information, including health information and records, to which the person would be entitled to have access if capable, and consent to the release of that information to another person, except for the purposes of litigation that relates to the person's property or to the guardian's status or powers;
 - (e) on behalf of the person, make any decision to which the *Health Care Consent Act, 1996* applies;
 - (e.1) make decisions about the person's health care, nutrition and hygiene;

- (f) make decisions about the person's employment, education, training, clothing and recreation and about any social services provided to the person; and
- (g) exercise the other powers and perform the other duties that are specified in the order. 1992, c. 30, s. 59 (2); 1996, c. 2, s. 37 (1); 2006, c. 19, Sched. B, s. 22 (7).

Power to apprehend person

[\(3\)](#) If the guardian has custodial power over the person and the court is satisfied that it may be necessary to apprehend him or her, the court may in its order authorize the guardian to do so; in that case the guardian may, with the assistance of a police officer, enter the premises specified in the order, between 9 a.m. and 4 p.m. or during the hours specified in the order, and search for and remove the person, using such force as may be necessary. 1992, c. 30, s. 59 (3).

Matters excluded unless expressly stated

[\(4\)](#) Unless the order expressly provides otherwise, the guardian does not have power,

(a) Repealed: 1996, c. 2, s. 37 (2).

(b) to change existing arrangements in respect of custody of or access to a child, or to give consent on the person's behalf to the adoption of a child. 1992, c. 30, s. 59 (4); 1996, c. 2, s. 37 (2).

Same

[\(5\)](#) If the order provides that the guardian has a power referred to in subsection (4), the order may specify that the power may be exercised from time to time as the need arises. 1992, c. 30, s. 59 (5); 1996, c. 2, s. 37 (3).

Access to personal information

[59.1](#) Any person who has personal information about an incapable person to which the incapable person would be entitled to have access if capable, including health information and records, shall disclose it to the incapable person's guardian of the person on request if the guardian has the power referred to in clause 59 (2) (d). 2006, c. 19, Sched. B, s. 22 (8).

Partial guardianship

[60. \(1\)](#) The court may make an order for partial guardianship of the person for an incapable person if it finds that he or she is incapable in respect of some but not all of the functions referred to in section 45. 1992, c. 30, s. 60 (1).

Same

[\(2\)](#) The order shall specify in respect of which functions the person is found to be incapable. 1992, c. 30, s. 60 (2).

Powers of guardian

[\(3\)](#) Under an order for partial guardianship, the guardian may exercise those of the powers set out in subsections 59 (2), (3), (4) and (5) that are specified in the order. 1996, c. 2, s. 38.

Variation or substitution of appointment order

61. (1) The court may vary an order appointing a guardian of the person under section 55 or substitute another person as guardian, on motion in the proceeding in which the guardian was appointed. 1996, c. 2, s. 39.

Who may make motion

(2) A motion under subsection (1) may be made by the guardian, the applicant in the proceeding in which the guardian was appointed, or any person who was entitled under section 69 to be served with notice of that proceeding. 1996, c. 2, s. 39.

Motion to vary

(3) Subsections 69 (4) to (9) and section 77 apply, with necessary modifications, to a motion to vary an order. 1996, c. 2, s. 39.

Motion to substitute

(4) Subsection 69 (3), subsections 69 (5) to (9), subsection 70 (2) and section 77 apply, with necessary modifications, to a motion to substitute another person as guardian. 1996, c. 2, s. 39.

Temporary guardian, court appointment

Serious adverse effects

62. (1) Serious illness or injury, or deprivation of liberty or personal security, are serious adverse effects for the purposes of this section. 1992, c. 30, s. 62 (1).

Duty to investigate

(2) The Public Guardian and Trustee shall investigate any allegation that a person is incapable of personal care and that serious adverse effects are occurring or may occur as a result. 1992, c. 30, s. 62 (2).

Extent of investigation

(3) In conducting an investigation under subsection (2), the Public Guardian and Trustee is not required to take any steps that, in his or her opinion, are unnecessary for the purpose of determining whether an application to the court is required under subsection (3.1). 1996, c. 2, s. 40 (1).

Application for temporary guardianship

(3.1) If, as a result of the investigation, the Public Guardian and Trustee has reasonable grounds to believe that a person is incapable of personal care and that the prompt appointment of a temporary guardian of the person is required to prevent serious adverse effects, the Public Guardian and Trustee shall apply to the court for an order appointing him or her as the incapable person's temporary guardian of the person. 1996, c. 2, s. 40 (1).

Notice

(4) Notice of the application shall be served on the person alleged to be incapable, and his or her attorney for personal care, if known, unless the court dispenses with notice in view of the nature and urgency of the matter. 1992, c. 30, s. 62 (4); 1996, c. 2, s. 40 (2).

(5) Repealed: 1996, c. 2, s. 40 (3).

Order appointing temporary guardian

(6) The court may by order appoint the Public Guardian and Trustee as temporary guardian. 1992, c. 30, s. 62 (6).

Duration of appointment

(7) The appointment is valid for a period fixed by the court that does not exceed 90 days. 1996, c. 2, s. 40 (4).

Contents of order

(8) The order shall set out the Public Guardian and Trustee's powers as temporary guardian and any conditions imposed on the guardianship. 1992, c. 30, s. 62 (8).

Power of attorney

(9) The order may suspend the powers of any attorney under a power of attorney for personal care during the term of the temporary guardianship. 1996, c. 2, s. 40 (5).

Service of order

(9.1) If the order was made without notice, it shall be served on the person as soon as possible. 1996, c. 2, s. 40 (5).

Power to apprehend person

(10) If the Public Guardian and Trustee has custodial power over the person and the court is satisfied that it may be necessary to apprehend him or her, the court may authorize the Public Guardian and Trustee to do so; in that case the Public Guardian and Trustee may, with the assistance of a police officer, enter the premises specified in the order, between 9 a.m. and 4 p.m. or during the hours specified in the order, and search for and remove the person, using such force as may be necessary. 1992, c. 30, s. 62 (10).

Termination, variation

(11) On motion by the Public Guardian and Trustee or by the person under guardianship, the court may terminate the guardianship, reduce or extend its term, or otherwise vary the order. 1996, c. 2, s. 40 (6).

Duty if no application made

(12) If the Public Guardian and Trustee conducts an investigation under this section and decides not to make an application under subsection (3.1), the Public Guardian and Trustee shall, within three years,

- (a) destroy all information collected during the investigation and during any previous investigations in respect of the person under this section; and
- (b) notify the person who was alleged to be incapable that,
 - (i) an allegation was made that the person was incapable of personal care and that serious adverse effects were occurring or might occur as a result,
 - (ii) the Public Guardian and Trustee investigated the allegation as required by this Act and decided not to make an application for temporary guardianship, and

(iii) the Public Guardian and Trustee has destroyed all information collected during the investigation. 1996, c. 2, s. 40 (6).

Exception

(13) Subsection (12) does not apply if, within three years after the decision is made not to make an application under subsection (3.1),

- (a) another investigation is commenced in respect of the person under this section or section 27; or
- (b) the Public Guardian and Trustee becomes the person's guardian of property or guardian of the person. 1996, c. 2, s. 40 (6).

Termination

63. (1) The court may terminate a guardianship created under section 55, on motion in the proceeding in which the guardian was appointed. 1996, c. 2, s. 41.

Who may make motion

(2) A motion under subsection (1) may be made by the guardian, the applicant in the proceeding in which the guardian was appointed, or any person who was entitled under section 69 to be served with notice of that proceeding. 1996, c. 2, s. 41.

Suspension

64. In a motion to terminate a guardianship or temporary guardianship, the court may suspend the powers of the guardian or temporary guardian. 1996, c. 2, s. 41.

Procedure, termination

65. Part III (Procedure) applies to motions to terminate guardianships of the person. 1992, c. 30, s. 65; 1996, c. 2, s. 42.

DUTIES OF GUARDIANS OF THE PERSON AND ATTORNEYS FOR PERSONAL CARE

Duties of guardian

66. (1) The powers and duties of a guardian of the person shall be exercised and performed diligently and in good faith. 1992, c. 30, s. 66 (1).

Explanation

(2) The guardian shall explain to the incapable person what the guardian's powers and duties are. 1992, c. 30, s. 66 (2).

Decisions under *Health Care Consent Act, 1996*

(2.1) The guardian shall make decisions on the incapable person's behalf to which the *Health Care Consent Act, 1996* applies in accordance with that Act. 1996, c. 2, s. 43 (1).

Other decisions

(3) The guardian shall make decisions on the incapable person's behalf to which the *Health Care Consent Act, 1996* does not apply in accordance with the following principles:

1. If the guardian knows of a wish or instruction applicable to the circumstances that the incapable person expressed while capable, the guardian shall make the decision

in accordance with the wish or instruction.

2. The guardian shall use reasonable diligence in ascertaining whether there are such wishes or instructions.
3. A later wish or instruction expressed while capable prevails over an earlier wish or instruction.
4. If the guardian does not know of a wish or instruction applicable to the circumstances that the incapable person expressed while capable, or if it is impossible to make the decision in accordance with the wish or instruction, the guardian shall make the decision in the incapable person's best interests. 1992, c. 30, s. 66 (3); 1996, c. 2, s. 43 (2).

Best interests

(4) In deciding what the person's best interests are for the purpose of subsection (3), the guardian shall take into consideration,

- (a) the values and beliefs that the guardian knows the person held when capable and believes the person would still act on if capable;
- (b) the person's current wishes, if they can be ascertained; and
- (c) the following factors:
 1. Whether the guardian's decision is likely to,
 - i. improve the quality of the person's life,
 - ii. prevent the quality of the person's life from deteriorating, or
 - iii. reduce the extent to which, or the rate at which, the quality of the person's life is likely to deteriorate.
 2. Whether the benefit the person is expected to obtain from the decision outweighs the risk of harm to the person from an alternative decision. 1996, c. 2, s. 43 (3).

Records of decisions

(4.1) The guardian shall, in accordance with the regulations, keep records of decisions made by the guardian on the incapable person's behalf. 1996, c. 2, s. 43 (3).

Participation

(5) The guardian shall encourage the person to participate, to the best of his or her abilities, in the guardian's decisions on his or her behalf. 1992, c. 30, s. 66 (5).

Family and friends

(6) The guardian shall seek to foster regular personal contact between the incapable person and supportive family members and friends of the incapable person. 1992, c. 30, s. 66 (6).

Consultation

- (7) The guardian shall consult from time to time with,
- (a) supportive family members and friends of the incapable person who are in regular personal contact with the incapable person; and
 - (b) the persons from whom the incapable person receives personal care. 1992, c. 30, s. 66 (7).

Independence

(8) The guardian shall, as far as possible, seek to foster the person's independence. 1992, c. 30, s. 66 (8).

Least restrictive course of action

(9) The guardian shall choose the least restrictive and intrusive course of action that is available and is appropriate in the particular case. 1992, c. 30, s. 66 (9).

Confinement, restraint and monitoring devices

(10) The guardian shall not use confinement or monitoring devices or restrain the person physically or by means of drugs, and shall not give consent on the person's behalf to the use of confinement, monitoring devices or means of restraint, unless,

- (a) the practice is essential to prevent serious bodily harm to the person or to others, or allows the person greater freedom or enjoyment.
- (b) Repealed: 1996, c. 2, s. 43 (4).

1992, c. 30, s. 66 (10); 1996, c. 2, s. 43 (4).

Common law

(11) Nothing in this Act affects the common law duty of caregivers to restrain or confine persons when immediate action is necessary to prevent serious bodily harm to them or to others. 1992, c. 30, s. 66 (11).

Electric shock as aversive conditioning

(12) The guardian shall not use electric shock as aversive conditioning and shall not give consent on the person's behalf to the use of electric shock as aversive conditioning unless the consent is given to a treatment in accordance with the *Health Care Consent Act, 1996*. 1996, c. 2, s. 43 (5).

Research

(13) Nothing in this Act affects the law relating to giving or refusing consent on another person's behalf to a procedure whose primary purpose is research. 1992, c. 30, s. 66 (13).

Sterilization, transplants

(14) Nothing in this Act affects the law relating to giving or refusing consent on another person's behalf to one of the following procedures:

1. Sterilization that is not medically necessary for the protection of the person's health.
2. The removal of regenerative or non-regenerative tissue for implantation in another

person's body. 1992, c. 30, s. 66 (14).

Guardianship plan

[\(15\)](#) A guardian shall act in accordance with the guardianship plan. 1992, c. 30, s. 66 (15).

Amendment of plan

[\(16\)](#) If there is a guardianship plan, it may be amended from time to time with the Public Guardian and Trustee's approval. 1992, c. 30, s. 66 (16).

[\(17\)](#) Repealed: 1996, c. 2, s. 43 (6).

[\(18\)](#) Repealed: 1996, c. 2, s. 43 (6).

Immunity

[\(19\)](#) No proceeding for damages shall be commenced against a guardian for anything done or omitted in good faith in connection with the guardian's powers and duties under this Act. 1992, c. 30, s. 66 (19).

Duties of attorney

[67.](#) Section 66, except subsections 66(15) and (16), applies with necessary modifications to an attorney who acts under a power of attorney for personal care. 1996, c. 2, s. 44.

Directions from court

[68. \(1\)](#) If an incapable person has a guardian of the person or an attorney under a power of attorney for personal care, the court may give directions on any question arising in the guardianship or under the power of attorney. 1996, c. 2, s. 44.

Form of request

[\(2\)](#) A request for directions shall be made,

- (a) on application, if no guardian of the person has been appointed under section 55 or 62; or
- (b) on motion in the proceeding in which the guardian was appointed, if a guardian of the person has been appointed under section 55 or 62. 1996, c. 2, s. 44.

Applicant; moving party

[\(3\)](#) An application or motion under this section may be made by the incapable person's guardian of the person, attorney under a power of attorney for personal care, dependant, guardian of property or attorney under a continuing power of attorney, by the Public Guardian and Trustee, or by any other person with leave of the court. 1996, c. 2, s. 44.

Order

[\(4\)](#) The court may by order give such directions as it considers to be for the benefit of the person and consistent with this Act. 1996, c. 2, s. 44.

Variation of order

[\(5\)](#) The court may, on motion by a person referred to in subsection (3), vary the order.

1996, c. 2, s. 44.

PART III PROCEDURE IN GUARDIANSHIP APPLICATIONS

Service of notices

Application to terminate statutory guardianship of property

69. (0.1) Notice of an application to terminate a statutory guardianship of property shall be served on the following persons:

1. The statutory guardian of property.
2. The applicant's guardian of the person, if known.
3. The applicant's attorney for personal care, if known.
4. The Public Guardian and Trustee, if he or she is not the statutory guardian. 1996, c. 2, s. 45 (1).

Application to appoint guardian of property

(1) Notice of an application to appoint a guardian of property shall be served on the following persons, together with the documents referred to in subsection 70 (1), and those referred to in section 72 if applicable:

1. The person alleged to be incapable of managing property.
2. The attorney under his or her continuing power of attorney, if known.
3. His or her guardian of the person, if known.
4. His or her attorney for personal care, if known.
5. The Public Guardian and Trustee.
6. The proposed guardian of property. 1992, c. 30, s. 69 (1).

Motion to terminate guardianship of property

(2) Notice of a motion to terminate a guardianship of property shall be served on the following persons, together with the documents referred to in section 73 if applicable:

1. The person whose property is under guardianship.
2. His or her guardian of the person, if known.
3. His or her attorney for personal care, if known.
4. The Public Guardian and Trustee.
5. The guardian of property. 1992, c. 30, s. 69 (2); 1996, c. 2, s. 45 (2).

Application to appoint guardian of the person

(3) Notice of an application to appoint a guardian of the person shall be served on the following persons, together with the documents referred to in subsection 70 (2), and those referred to in subsection 71 (1) and section 74 if applicable:

1. The person alleged to be incapable of personal care.
2. The attorney under his or her continuing power of attorney, if known.
3. His or her guardian of property, if known.
4. His or her attorney for personal care, if known.
5. The Public Guardian and Trustee.
6. The proposed guardian of the person. 1992, c. 30, s. 69 (3).

Motion to terminate guardianship of the person

(4) Notice of a motion to terminate a guardianship of the person shall be served on the following persons, together with the documents referred to in section 75 if applicable:

1. The person under guardianship.
2. His or her guardian of property, if known.
3. The attorney under his or her continuing power of attorney, if known.
4. The Public Guardian and Trustee.
5. The guardian of the person. 1992, c. 30, s. 69 (4); 1996, c. 2, s. 45 (3).

Same

(5) The notice and accompanying documents need not be served on the applicant or moving party. 1992, c. 30, s. 69 (5); 1996, c. 2, s. 45 (4).

Service on family

(6) The notice and accompanying documents shall also be served on all of the following persons who are known, by ordinary mail sent to the person's last known address:

1. The spouse or partner of the person who is alleged to be incapable of managing property, whose property is under guardianship, who is alleged to be incapable of personal care or who is under guardianship of the person, as the case may be.
2. The person's children who are at least 18 years old, in the case of an application or motion under Part I, or at least 16 years old, in the case of an application or motion under Part II.
3. The person's parents.
4. The person's brothers and sisters who have attained the relevant age referred to in paragraph 2. 1992, c. 30, s. 69 (6); 1996, c. 2, s. 45 (5).

Exception

(7) Subsection (6) does not require service on a person whose existence or address cannot be ascertained by the use of reasonable diligence. 1992, c. 30, s. 69 (7).

Parties

(8) The parties to the application or motion are the applicant or moving party and the persons served under subsection (0.1), (1), (2), (3) or (4), as the case may be. 1996, c. 2,

s. 45 (6).

Adding parties

(9) Any of the following persons is entitled to be added as a party at any stage in the application or motion:

1. A person referred to in paragraph 2 or 3 of subsection (0.1), paragraph 2, 3 or 4 of subsection (1), paragraph 2 or 3 of subsection (2), paragraph 2, 3 or 4 of subsection (3) or paragraph 2 or 3 of subsection (4), as the case may be, who was not served with the notice of application or notice of motion.
2. A person referred to in subsection (6), whether or not served with the notice of application or notice of motion. 1996, c. 2, s. 45 (6).

(10) Repealed: 1996, c. 2, s. 45 (6).

(11) Repealed: 1996, c. 2, s. 45 (6).

Required documents

Application to appoint guardian of property

70. (1) An application to appoint a guardian of property shall be accompanied by,

- (a) the proposed guardian's consent;
- (b) if the proposed guardian is not the Public Guardian and Trustee, a plan of management for the property, in the prescribed form; and
- (c) a statement signed by the applicant,
 - (i) indicating that the person alleged to be incapable has been informed of the nature of the application and the right to oppose the application, and describing the manner in which the person was informed, or
 - (ii) if it was not possible to give the person alleged to be incapable the information referred to in subclause (i), describing why it was not possible. 1992, c. 30, s. 70 (1); 1996, c. 2, s. 46 (1).

Application to appoint guardian of the person

(2) An application to appoint a guardian of the person shall be accompanied by,

- (a) the proposed guardian's consent;
- (b) if the proposed guardian is not the Public Guardian and Trustee, a guardianship plan, in the prescribed form; and
- (c) a statement signed by the applicant,
 - (i) indicating that the person alleged to be incapable has been informed of the nature of the application and the right to oppose the application, and describing the manner in which the person was informed, or
 - (ii) if it was not possible to give the person alleged to be incapable the information referred to in subclause (i), describing why it was not possible.

1992, c. 30, s. 70 (2); 1996, c. 2, s. 46 (2).

Optional documents

Application to appoint guardian of the person

71. (1) An application to appoint a guardian of the person may also be accompanied by one or more statements, each made in the prescribed form by a person who knows the person alleged to be incapable and has been in personal contact with him or her during the twelve months before the notice of application was issued. 1992, c. 30, s. 71 (1).

Motion to terminate guardianship of the person

(2) A motion to terminate a guardianship of the person may be accompanied by one or more statements, each made in the prescribed form by a person who knows the person under guardianship and has been in personal contact with him or her during the twelve months before the notice of motion was filed with the court. 1992, c. 30, s. 71 (2); 1996, c. 2, s. 47.

Required documents, summary disposition, application to appoint guardian of property

72. (1) If the applicant wishes an application to appoint a guardian of property to be dealt with under section 77 (summary disposition), it shall also be accompanied by two statements made in the prescribed form, one by an assessor and the other by an assessor or by a person who knows the person alleged to be incapable and has been in personal contact with him or her during the twelve months before the notice of application was issued. 1992, c. 30, s. 72 (1).

Contents of statements

(2) Each statement shall,

- (a) indicate that its maker is of the opinion that the person is incapable of managing property, and set out the facts on which the opinion is based; and
- (b) indicate that its maker can expect no direct or indirect pecuniary benefit as the result of the appointment of a guardian of property. 1992, c. 30, s. 72 (2).

Same

(3) The statement may also indicate that its maker is of the opinion that it is necessary for decisions to be made on the person's behalf by a person who is authorized to do so and, in that case, shall set out the facts on which the opinion is based. 1992, c. 30, s. 72 (3).

Assessment

(4) A statement made by an assessor may be used for the purpose of subsection (1) only if,

- (a) the statement indicates that the assessor performed an assessment of the person's capacity and specifies the date on which the assessment was performed; and
- (b) the assessment was performed during the six months before the notice of application was issued. 1996, c. 2, s. 48.

Required documents, summary disposition, motion to terminate guardianship of property

73. (1) If the moving party wishes a motion to terminate a guardianship of property to be dealt with under section 77 (summary disposition), it shall be accompanied by two statements made in the prescribed form, one by an assessor and the other by an assessor or by a person who knows the person whose property is under guardianship and has been in personal contact with him or her during the twelve months before the notice of motion was filed with the court. 1992, c. 30, s. 73 (1); 1996, c. 2, s. 49 (1).

Contents of statements

(2) Each statement shall,

- (a) indicate that the maker of the statement is of the opinion that the person is capable of managing property, and set out the facts on which the opinion is based; and
- (b) indicate that the maker of the statement can expect no direct or indirect pecuniary benefit as the result of the termination of the guardianship. 1992, c. 30, s. 73 (2).

Assessment

(3) A statement made by an assessor may be used for the purpose of subsection (1) only if,

- (a) the statement indicates that the assessor performed an assessment of the person's capacity and specifies the date on which the assessment was performed; and
- (b) the assessment was performed during the six months before the notice of motion was filed with the court. 1996, c. 2, s. 49 (2).

Required documents, summary disposition, application to appoint guardian of the person

74. (1) If the applicant wishes an application to appoint a guardian of the person to be dealt with under section 77 (summary disposition), the application shall also be accompanied by two statements, each made in the prescribed form by an assessor. 1992, c. 30, s. 74 (1).

Contents of statement

(2) Each statement shall indicate that its maker is of the opinion that the person is incapable in respect of the functions referred to in section 45 (personal care), or in respect of some of them, and shall set out the facts on which the opinion is based. 1992, c. 30, s. 74 (2).

Same

(3) The statement may also indicate that its maker is of the opinion that the person needs decisions to be made on his or her behalf by a person who is authorized to do so and, in that case, shall set out the facts on which the opinion is based. 1992, c. 30, s. 74 (3).

Same

(4) Each statement shall,

- (a) Repealed: 1996, c. 2, s. 50 (1).
- (b) contain an evaluation of the nature and extent of the person's incapacity, setting out the facts on which the evaluation is based. 1992, c. 30, s. 74 (4); 1996, c. 2,

s. 50 (1).

Assessment

- [\(5\)](#) A statement may be used for the purpose of subsection (1) only if,
- (a) the statement indicates that the assessor performed an assessment of the person's capacity and specifies the date on which the assessment was performed; and
 - (b) the assessment was performed during the six months before the notice of application was issued. 1996, c. 2, s. 50 (2).

Required documents, summary disposition, motion to terminate guardianship of the person

[75. \(1\)](#) If the moving party wishes a motion to terminate a guardianship of the person to be dealt with under section 77 (summary disposition), the motion shall also be accompanied by two statements, each made in the prescribed form by an assessor. 1992, c. 30, s. 75 (1); 1996, c. 2, s. 51 (1).

Contents of statements

[\(2\)](#) Each statement shall indicate that its maker is of the opinion that the person is capable of personal care, and shall set out the facts on which the opinion is based. 1992, c. 30, s. 75 (2).

Assessment

- [\(3\)](#) A statement may be used for the purpose of subsection (1) only if,
- (a) the statement indicates that the assessor performed an assessment of the person's capacity and specifies the date on which the assessment was performed; and
 - (b) the assessment was performed during the six months before the notice of motion was filed with the court. 1996, c. 2, s. 51 (2).

[76.](#) Repealed: 1996, c. 2, s. 52.

Summary disposition

[77. \(1\)](#) In an application to appoint a guardian of property or guardian of the person or a motion to terminate a guardianship of property or guardianship of the person, the court may, in the circumstances described in subsection (2), make an order without anyone appearing before it and without holding a hearing. 1996, c. 2, s. 53.

Same

[\(2\)](#) The registrar of the court shall submit the notice of application or notice of motion, and the accompanying documents, to a judge of the court if,

- (a) in the case of an application, the applicant certifies in writing that,
 - (i) no person has delivered a notice of appearance,
 - (ii) the documents required by this Part accompany the application,
 - (iii) in the case of an application to appoint a guardian of property, at least one of

the statements referred to in section 72 indicates that its maker is of the opinion that it is necessary for decisions to be made on the person's behalf by a person who is authorized to do so, and

(iv) in the case of an application to appoint a guardian of the person, at least one of the statements referred to in section 74 indicates that its maker is of the opinion that the person needs decisions to be made on his or her behalf by a person who is authorized to do so;

(b) in the case of a motion, the moving party certifies in writing that,

(i) the documents required by this Part accompany the motion, and

(ii) every person entitled to be served with the notice of motion has filed with the court a statement indicating that they do not intend to appear at the hearing of the motion. 1996, c. 2, s. 53.

Order

(3) On considering the application or motion, the judge may,

(a) grant the relief sought;

(b) require the parties or their counsel to adduce additional evidence or make representations; or

(c) order that the application or motion proceed to a hearing or order the trial of an issue, and give such directions as the judge considers just. 1996, c. 2, s. 53.

PART IV MISCELLANEOUS

Right to refuse assessment

78. (1) An assessor shall not perform an assessment of a person's capacity if the person refuses to be assessed. 1996, c. 2, s. 54.

Information to be provided

(2) Before performing an assessment of capacity, the assessor shall explain to the person to be assessed,

(a) the purpose of the assessment;

(b) the significance and effect of a finding of capacity or incapacity; and

(c) the person's right to refuse to be assessed. 1996, c. 2, s. 54.

Application

(3) Subsections (1) and (2) do not apply to an assessment if,

(a) the assessment was ordered by the court under section 79; or

(b) a power of attorney for personal care contains a provision that authorizes the use of force to permit the assessment and the provision is effective under subsection

50 (1). 1996, c. 2, s. 54.

Use of prescribed form

(4) An assessor who performs an assessment of a person's capacity shall use the prescribed form in performing the assessment. 1996, c. 2, s. 54.

Notice of findings

(5) An assessor who performs an assessment of a person's capacity shall give the person written notice of the assessor's findings. 1996, c. 2, s. 54.

Order for assessment

79. (1) If a person's capacity is in issue in a proceeding under this Act and the court is satisfied that there are reasonable grounds to believe that the person is incapable, the court may, on motion or on its own initiative, order that the person be assessed by one or more assessors named in the order, for the purpose of giving an opinion as to the person's capacity. 1992, c. 30, s. 79 (1).

Same

(2) The order may require the person,

(a) to submit to the assessment;

(b) to permit entry to his or her home for the purpose of the assessment;

(c) to attend at such other places and at such times as are specified in the order. 1992, c. 30, s. 79 (2).

Place of assessment

(3) The order shall specify the place or places where the assessment is to be performed. 1992, c. 30, s. 79 (3).

Same

(4) If possible, the assessment shall be performed in the person's home. 1992, c. 30, s. 79 (4).

Health facility

(5) An order that specifies a health facility as the place where the assessment is to be performed authorizes the person's admission to the facility for the purpose of the assessment. 1992, c. 30, s. 79 (5).

Restraining order

80. (1) When an order for an assessment has been made, the court may, on motion, make an order restraining a person other than the one whose capacity is in issue from hindering or obstructing the assessment. 1992, c. 30, s. 80 (1).

(2) Repealed: 1996, c. 2, s. 55.

Notice to person

(3) The party moving for the restraining order shall serve notice of the motion on the person against whom the order is sought. 1992, c. 30, s. 80 (3).

Order for enforcement of assessment order

81. (1) When an order for an assessment has been made under section 79, the court may, on motion, order the applicant in the proceeding in which the person's capacity is in issue, together with a police officer, to apprehend the person, take him or her into custody and bring him or her to a specified place to be assessed there, if the court is satisfied that,

- (a) the assessor named in the order under section 79 has made all efforts that are reasonable in the circumstances to assess the person;
- (b) the assessor was prevented from assessing the person by the actions of the person or of others;
- (c) a restraining order is not appropriate in the circumstances, or has already been used without success; and
- (d) there is no less intrusive means of permitting the assessment to be performed than an order under this subsection. 2006, c. 19, Sched. B, s. 22 (9).

Duration of order

(2) The order is valid for seven days. 2006, c. 19, Sched. B, s. 22 (9).

Execution of order

(3) The person named in the order and a police officer may enter the place specified in the order, between 9 a.m. and 4 p.m. or during the hours specified in the order, and may search for and remove the person, using such force as may be necessary. 2006, c. 19, Sched. B, s. 22 (9).

Health facility

(4) An order under subsection (1) that specifies a health facility as the place where the assessment is to be conducted authorizes the person's admission to the facility and his or her detention there, for the purpose of the assessment. 2006, c. 19, Sched. B, s. 22 (9).

Restrictions

(5) The person shall not be held in custody longer than is necessary for the purpose of the assessment, and in any case not for a period exceeding 72 hours, and while in custody shall not be confined in a manner that exceeds what is necessary for the purpose of the assessment. 2006, c. 19, Sched. B, s. 22 (9).

P.G.T.'s powers of entry

82. (1) The Public Guardian and Trustee may exercise a right of entry conferred by this section only for the purpose of an investigation required by section 27 or 62. 1992, c. 30, s. 82 (1).

Entry to certain premises

(2) The Public Guardian and Trustee is entitled to enter a facility or controlled-access residence, without a warrant and at any time that is reasonable in the circumstances, if he or she has reasonable grounds to believe that,

- (a) the person who is alleged to be incapable is in the premises; and

- (b) a meeting with the person is necessary for the purposes of the investigation. 1992, c. 30, s. 82 (2).

Controlled-access residences

(3) The right to enter a controlled-access residence under subsection (2) applies only to the common areas of the premises, including the entryways, hallways, elevators and stairs, and the Public Guardian and Trustee may enter a private dwelling unit in the controlled-access residence without the consent or acquiescence of the occupier only if authorized under subsection (4) or (8). 1992, c. 30, s. 82 (3).

Warrant for entry

(4) A justice of the peace may issue a warrant to the Public Guardian and Trustee for entry to premises if the justice of the peace is satisfied that the person who is alleged to be incapable is in the premises and,

- (a) the Public Guardian and Trustee has been prevented from exercising a right of entry to the premises under subsection (2); or
- (b) a meeting with the person is necessary for the purposes of the investigation. 1992, c. 30, s. 82 (4).

Authority conferred by warrant

(5) The warrant authorizes the Public Guardian and Trustee to enter the premises specified in the warrant, between 8 a.m. and 8 p.m. or during the hours specified in the warrant, and to remain there for a reasonable time. 1992, c. 30, s. 82 (5).

Duration

(6) A warrant is valid for seven days. 1992, c. 30, s. 82 (6).

Police assistance

(7) The Public Guardian and Trustee may call on a police officer for assistance in executing it. 1992, c. 30, s. 82 (7).

Other entry without warrant

(8) The Public Guardian and Trustee is entitled to enter premises other than premises that he or she is entitled to enter under subsection (2), without a warrant and between 8 a.m. and 8 p.m., if he or she has reasonable grounds to believe that,

- (a) the person who is alleged to be incapable is in the premises;
- (b) a meeting with the person is necessary for the purposes of the investigation; and
- (c) it is impractical, by reason of the location of the premises, to obtain a warrant under subsection (4). 1992, c. 30, s. 82 (8).

Meeting

(9) When the Public Guardian and Trustee exercises a right of entry under this section, he or she is entitled to meet with the person who is alleged to be incapable without interference and in private. 1992, c. 30, s. 82 (9).

Obligation to leave premises

[\(10\)](#) The Public Guardian and Trustee must leave the premises promptly if the person who is alleged to be incapable indicates that he or she does not want to meet with the Public Guardian and Trustee. 1992, c. 30, s. 82 (10).

Identification

[\(11\)](#) A person exercising a right of entry under this section shall, on request, present identification. 1992, c. 30, s. 82 (11).

References to P.G.T.

[\(12\)](#) A reference in this section to the Public Guardian and Trustee includes any person he or she designates for the purpose of this section. 1992, c. 30, s. 82 (12).

P.G.T.'s access to records

83. (1) The Public Guardian and Trustee is entitled to have access, for the purpose of an investigation required by section 27 or 62, to any record relating to the person who is alleged to be incapable that the Public Guardian and Trustee reasonably believes to be relevant to the investigation and that is in the custody or control of,

- (a) the person's guardian of property or guardian of the person;
- (b) the person's attorney under a power of attorney that confers authority in respect of the person's property or under a power of attorney for personal care;
- (c) a member of the College of a health profession as defined in the *Regulated Health Professions Act, 1991*;
- (d) a facility;
- (e) a person who operates a controlled-access residence;
- (f) a bank, loan or trust corporation, credit union or other financial institution;
- (g) an administrator of a pension fund;
- (h) a real estate broker or agent; or
- (i) any other person or class of persons designated by the regulations. 1992, c. 30, s. 83 (1). 1996, c. 2, s. 57; 2009, c. 33, Sched. 2, s. 71 (8).

Exception, solicitor-client privilege

[\(2\)](#) Subsection (1) does not override any solicitor-client privilege to which a record is subject. 1992, c. 30, s. 83 (2).

Exception, law enforcement

[\(3\)](#) The Public Guardian and Trustee is not entitled to have access to a record or part of a record whose disclosure could reasonably be expected to produce one of the results described in subsection 14 (1) of the *Freedom of Information and Protection of Privacy Act*. 1992, c. 30, s. 83 (3).

Rules re access to record

(4) The following rules apply when the Public Guardian and Trustee is entitled to have access to a record:

1. The Public Guardian and Trustee is entitled to be given access to the record no later than four business days after requesting access.
2. The Public Guardian and Trustee is not entitled to have access to any information in the record that is personal information, as defined in the *Freedom of Information and Protection of Privacy Act*, relating to an individual other than the person who is alleged to be incapable.
3. The Public Guardian and Trustee is not entitled to make a search among the records kept by the person who has custody or control of the record.
4. The Public Guardian and Trustee is entitled to make copies or extracts from the record in any manner that does not damage the record.
5. At the Public Guardian and Trustee's request and within a reasonable time, the person who has custody or control of a record shall provide the Public Guardian and Trustee with photocopies of all or part of the record. The Public Guardian and Trustee shall pay the prescribed amount for any photocopies in excess of twenty pages.
6. If the person who has custody or control of records consents, the Public Guardian and Trustee may remove records for copying.
7. The Public Guardian and Trustee shall give a receipt for the records being removed and shall return them within two business days.
8. Records needed for the current care of the person who is alleged to be incapable shall not be removed. 1992, c. 30, s. 83 (4).

Warrant for access to record

(5) A justice of the peace may issue a warrant for access to a record to the Public Guardian and Trustee if satisfied that,

- (a) the Public Guardian and Trustee is entitled to access to the record under this section; and
- (b) the Public Guardian and Trustee has been refused access to the record, or has been refused copies and has been refused permission to remove the record for copying. 1992, c. 30, s. 83 (5).

Authority conferred by warrant

(6) The warrant authorizes the Public Guardian and Trustee to,

- (a) inspect the record specified in the warrant, between 9 a.m. and 4 p.m. or during the hours specified in the warrant, subject to paragraph 2 of subsection (4);
- (b) make copies or extracts from the record in any manner that does not damage the record; and

- (c) remove the record, subject to paragraphs 7 and 8 of subsection (4). 1992, c. 30, s. 83 (6).

Duration of warrant

- (7) The warrant is valid for seven days. 1992, c. 30, s. 83 (7).

Execution

(8) The Public Guardian and Trustee may call on a police officer for assistance in executing the warrant. 1992, c. 30, s. 83 (8).

Notice of access

(9) If the Public Guardian and Trustee obtains access to one or more records under this section, the Public Guardian and Trustee shall, unless it is not appropriate in the circumstances, notify the person who is alleged to be incapable as soon as reasonably possible that,

- (a) an allegation was made that the person is incapable of managing property or incapable of personal care and that serious adverse effects are occurring or might occur as a result;
- (b) the Public Guardian and Trustee is investigating the allegation as required by this Act; and
- (c) the Public Guardian and Trustee has obtained access to one or more records under this section for the purposes of the investigation. 2009, c. 33, Sched. 2, s. 71 (9).

Other acts

- (10) This section prevails over any other Act. 1992, c. 30, s. 83 (10).

References to P.G.T.

(11) A reference in this section to the Public Guardian and Trustee includes any person he or she designates for the purpose of this section. 1992, c. 30, s. 83 (11).

Statements as evidence

84. For the purposes of this Act, a statement in the prescribed form that purports to be signed by its maker is admissible in evidence without proof of his or her signature, office or professional qualifications. 1992, c. 30, s. 84.

Conflict of laws, formalities

85. (1) As regards the manner and formalities of executing a continuing power of attorney or power of attorney for personal care, the power of attorney is valid if at the time of its execution it complied with the internal law of the place where,

- (a) the power of attorney was executed;
- (b) the grantor was then domiciled; or
- (c) the grantor then had his or her habitual residence. 1992, c. 30, s. 85 (1).

“Internal law”

- (2) For the purpose of subsection (1), “internal law”, in relation to any place, excludes

the choice of law rules of that place. 1992, c. 30, s. 85 (2).

Revocation

(3) Subsections (1) and (2) apply with necessary modifications to the revocation of a continuing power of attorney or power of attorney for personal care. 1992, c. 30, s. 85 (3).

Legal requirements outside Ontario

(4) If, under this section or otherwise, a law in force outside Ontario is to be applied in relation to a continuing power of attorney or a power of attorney for personal care, the following requirements of that law shall be treated, despite any rule of that law to the contrary, as formal requirements only:

1. Any requirement that special formalities be observed by grantors answering a particular description.
2. Any requirement that witnesses to the execution of the power of attorney possess certain qualifications. 1992, c. 30, s. 85 (4).

Alteration in law

(5) In determining for the purposes of this section whether or not the execution of a continuing power of attorney or power of attorney for personal care conforms to a particular law, regard shall be had to the formal requirements of that law at the time the power of attorney was executed, but account shall be taken of an alteration of law affecting powers of attorney executed at that time if the alteration enables the power of attorney to be treated as properly executed. 1992, c. 30, s. 85 (5).

Application

(6) This section applies to a continuing power of attorney or power of attorney for personal care executed either in or outside Ontario. 1992, c. 30, s. 85 (6).

Foreign orders

86. (1) In this section,

“foreign order” means an order made by a court outside Ontario that appoints, for a person who is sixteen years of age or older, a person having duties comparable to those of a guardian of property or guardian of the person. 1992, c. 30, s. 86 (1).

Resealing

(2) Any person may apply to the court for an order resealing a foreign order that was made in a province or territory of Canada or in a prescribed jurisdiction. 1992, c. 30, s. 86 (2).

Certificate from foreign court

(3) An order resealing a foreign order shall not be made unless the applicant files with the court,

- (a) a copy of the foreign order bearing the seal of the court that made it or a copy of the foreign order certified by the registrar, clerk or other officer of the court that made it; and

- (b) a certificate signed by the registrar, clerk or other officer of the court that made the foreign order stating that the order is unrevoked and of full effect. 1992, c. 30, s. 86 (3).

Effect of resealing

- (4) A foreign order that has been resealed,
- (a) has the same effect in Ontario as if it were an order under this Act appointing a guardian of property or guardian of the person, as the case may be;
 - (b) is subject in Ontario to any condition imposed by the court that the court may impose under this Act on an order appointing a guardian of property or guardian of the person, as the case may be; and
 - (c) is subject in Ontario to the provisions of this Act respecting guardians of property or guardians of the person, as the case may be. 1992, c. 30, s. 86 (4).

Volunteers

87. (1) The Public Guardian and Trustee may appoint volunteers to provide advice and assistance under this Act. 1996, c. 2, s. 58.

Protection from liability

(2) No proceeding for damages shall be instituted against a volunteer appointed under this section for any act done in good faith in the execution or intended execution of the volunteer's powers and duties or for any alleged neglect or default in the execution in good faith of the volunteer's powers or duties. 1996, c. 2, s. 58.

Same

(3) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (2) does not relieve the Crown of any liability to which the Crown would otherwise be subject. 1996, c. 2, s. 58.

Mediation

88. The Public Guardian and Trustee may mediate,
- (a) a dispute that arises between a person's guardian of property or attorney under a continuing power of attorney and the person's guardian of the person or attorney for personal care, if the dispute arises in the performance of their duties;
 - (b) a dispute that arises between joint attorneys under a person's continuing power of attorney or power of attorney for personal care, if the dispute arises in the performance of their duties; or
 - (c) a dispute that arises between joint guardians of property or joint guardians of the person, if the dispute arises in the performance of their duties. 1996, c. 2, s. 58.

Offences

Obstruction

89. (1) No person shall hinder or obstruct,

- (a) a person who is conducting an assessment ordered under section 79, or is seeking to do so;
- (b) a person who is exercising a power of entry conferred by subsection 82 (2), or is seeking to do so. 1992, c. 30, s. 89 (1); 1996, c. 2, s. 59 (1).

Penalty

(2) A person who contravenes subsection (1) is guilty of an offence and is liable, on conviction, to a fine not exceeding \$5,000. 1992, c. 30, s. 89 (2).

Exception

(3) Subsection (1) does not apply to,

- (a) the person who is the subject of the order for assessment; or
- (b) the person in respect of whom the power of entry is being exercised or is sought to be exercised. 1992, c. 30, s. 89 (3); 1996, c. 2, s. 59 (2).

Offence: restraining order

(4) A person who contravenes a restraining order made under subsection 80 (1) is guilty of an offence and is liable, on conviction, to a fine not exceeding \$5,000. 1992, c. 30, s. 89 (4).

Offence: false statement

(5) No person shall, in a statement made in a prescribed form, assert something that he or she knows to be untrue or profess an opinion that he or she does not hold. 1992, c. 30, s. 89 (5).

Penalty

(6) A person who contravenes subsection (5) is guilty of an offence and is liable, on conviction, to a fine not exceeding \$10,000. 1992, c. 30, s. 89 (6).

Offence: personal information

(7) A person who obtains personal information under the authority of a regulation made under subclause 90 (1) (e.4) (ii) and who contravenes a regulation made under clause 90 (1) (e.5) is guilty of an offence and is liable, on conviction, to a fine not exceeding \$10,000. 1996, c. 2, s. 59 (3).

Regulations

90. (1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing forms;
- (b) prescribing facilities for the purpose of the definition of “facility” in subsection 1 (1);
- (c) prescribing a fee scale for the compensation of guardians of property and attorneys under continuing powers of attorney, including annual percentage charges on revenue and on capital;
- (c.1) prescribing circumstances in which a person’s guardian of the person or attorney

- under a power of attorney for personal care may be compensated from the person's property for services performed as guardian or attorney, and prescribing the amount of the compensation or a method for determining the amount of the compensation;
- (c.2) governing the keeping of accounts and other records by attorneys under continuing powers of attorney, attorneys under powers of attorney for personal care, guardians of property and guardians of the person, and requiring them to provide information from the records to persons specified by the regulations;
- (c.3) establishing a public record of information relating to guardians of property, guardians of the person, attorneys under continuing powers of attorney or attorneys under powers of attorney for personal care, prescribing the contents of the record, governing the maintenance of the record, requiring persons to provide information for the purpose of the record and governing the disclosure of information from the record;
- (d) designating classes of persons, including persons who have successfully completed prescribed courses of training, as being qualified to do assessments of capacity or specific types of assessments of capacity;
- (e) prescribing courses of training for assessors;
- (e.1) prescribing standards for the performance of assessments of capacity by assessors;
- (e.2) regulating the fees that may be charged by assessors;
- (e.3) for the purpose of sections 38 and 39 of the *Freedom of Information and Protection of Privacy Act*, authorizing the Public Guardian and Trustee or an institution that has responsibilities related to assessments of capacity to collect personal information, directly or indirectly, for a purpose relating to this Act;
- (e.4) authorizing a member of a College as defined in the *Regulated Health Professions Act, 1991* or a person who provides health care or residential, social, training or support services despite any other Act or the regulations under any other Act, to disclose personal information about a person,
- (i) to an assessor, if the information is relevant to an assessment of capacity being performed by the assessor,
 - (ii) to a person who makes a statement in the prescribed form indicating that the person has made or intends to make an application to appoint a guardian of property or guardian of the person, if the information is relevant to the application, or
 - (iii) to the Public Guardian and Trustee, if the information is relevant to the making of an allegation described in subsection 27 (2) or 62 (2) or to an investigation being conducted under section 27 or 62;
- (e.5) governing the use, disclosure and retention of personal information obtained

- under the authority of a regulation made under clause (e.4);
- (e.6) designating persons or classes of persons from whom the Public Guardian and Trustee may obtain access to records under clause 83 (1) (i);
- (f) prescribing an amount per page to be paid for photocopies under paragraph 5 of subsection 83 (4);
- (g) prescribing jurisdictions for the purpose of section 86. 1992, c. 30, s. 90; 1996, c. 2, s. 60 (1-3); 2004, c. 3, Sched. A, s. 97 (2).

Regulations under cl. (1) (e.4)

[\(2\)](#) A regulation may not be made under clause (1) (e.4) unless a regulation has been made under clause (1) (e.5). 1996, c. 2, s. 60 (4).

General or particular

[\(3\)](#) A regulation made under subsection (1) may be general or particular in its application. 2006, c. 19, Sched. B, s. 22 (10).

Transition

[91.](#) Subject to subsections 46 (10) and (11), if a power of attorney for personal care is made in accordance with this Act before this Act comes into force, the power of attorney takes effect when this Act comes into force. 1992, c. 30, s. 91.

Note: A transitional provision to the *Advocacy, Consent and Substitute Decisions Statute Law Amendment Act, 1996* provided that nothing in that Act invalidated a power of attorney given before March 29, 1996. See: 1996, c. 2, s. 77.

[92.](#) Omitted (provides for coming into force of provisions of this Act). 1992, c. 30, s. 92.

[93.](#) Omitted (enacts short title of this Act). 1992, c. 30, s. 93.

SCHEDULE

Subsection 1 (1) – “Facility”

Alcoholism and Drug Addiction Research Foundation Act

Cancer Act

Child and Family Services Act

Developmental Services Act

Note: On a day to be named by proclamation of the Lieutenant Governor, the Schedule is amended by the Statutes of Ontario, 2008, chapter 14, subsection 59 (2) by striking out “*Developmental Services Act*”. See: 2008, c. 14, ss. 59 (2), 64.

General Welfare Assistance Act

Homes for Special Care Act
Independent Health Facilities Act
Long-Term Care Homes Act, 2007
Mental Health Act
Ministry of Community and Social Services Act
Ministry of Correctional Services Act
Ministry of Health and Long-Term Care Act
Ontario Mental Health Foundation Act
Private Hospitals Act
Public Hospitals Act

1992, c. 30, Sched.; 2001, c. 13, s. 30; 2006, c. 19, Sched. B, s. 22 (11); 2007, c. 8, s. 229;
2009, c. 33, Sched. 18, s. 33.

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