

PROPERTY/FINANCES:

If you believe that an individual is not capable of managing their own property decisions; it is important to consider if there is a 'less intrusive option' available, such as granting of a Power of Attorney (POA), automatic bill payments, etc., before pursuing legal guardianship. Less intrusive options may be sufficient in the short-term if the individual's capacity might improve. Less intrusive options may also be sufficient in the long-term if the person's financial situation is low risk, e.g. ODSP, OAS/GIS pensions, minimal assets and bank accounts, etc..

If a less intrusive option is not sufficient in your situation and you believe that the individual is not capable of managing their property, then you may want to consider the following options:

1. Another person such as a family member or friend may want to pursue a court application for guardianship of property.
2. A capacity assessment of the individual under Section 16 of the *Substitute Decisions Act, 1992* (SDA). If the person assessed is found incapable by an assessor, the Office of the Public Guardian and Trustee (OPGT) will automatically become their guardian of property.
 - a. If the OPGT becomes the guardian of property, it is possible for a relative of the incapable person to submit an application to the OPGT to replace them as guardian of the incapable person.
 - b. An application must be completed and submitted to the OPGT, after the assessment report has been submitted by the assessor. The OPGT will review the application and make their decision accordingly. For more information about this process, you may want to read the OPGT's brochure entitled "Helpful Hints in Completing your Application to Replace the Public Guardian and Trustee as Statutory Guardian" which can be found on their website.

Please note that capacity assessments are voluntary, and the individual has the right to refuse to be assessed.

PERSONAL CARE:

As you may already know, under the *Health Care Consent Act* (HCCA) it is the health practitioner proposing the treatment who determines if the patient is capable of making that decision. If an individual is found incapable of making a specific decision, the health practitioner will ask a substitute decision-maker (SDM) to make the decision on this person's behalf. In the brochure regarding health care decisions, there is a list of people who can act as SDM under the HCCA. Legal guardianship of the person is rarely required for health care/personal care issues. If there is conflict among family members/decision-makers and a POA is not in effect or able to be granted, court may be an option to consider. Due to the existence of the HCCA, capacity assessors are not to complete personal care assessments under the SDA unless it is for court purposes.

LETTERS OF OPINION:

Capacity assessors are only trained to complete capacity assessments under the SDA. The Capacity Assessment Office (CAO) does not train assessors on letters of opinion. Please be advised that not all assessors will provide letters of opinion, so you will have to ask them.

Letters of opinion can be obtained to determine testamentary capacity (mental capacity to execute a will) or capacity to grant/revoke a power of attorney. Additionally, the SDA does not outline a test for capacity to make or change a will, therefore we suggest that a lawyer provide the assessor with the test/definition.

FEES:

In order to arrange an assessment, please call a capacity assessor in your region directly. As indicated in the CAO brochure, the person requesting the assessment is generally the person who will be responsible for payment. Capacity assessors set their own hourly rates and vary according to the professional group to which the assessor belongs. Rates can range between \$100 and \$150+ per hour. Some assessors do charge higher fees due to their expertise in a specialized field. The total cost of the assessment will depend on a number of additional factors which may include:

- a) Nature and complexity of the person's condition
- b) Assessor's experience in conducting assessments
- c) Time required to complete the assessment and the related forms
- d) Additional expenses which may include travel time

It is generally recommended that you contact 2 or 3 assessors in your region and ask them about their experience, their availability, and a possible estimate of cost. You should ask about their hourly rate and an approximate total cost for their services. Some assessments may require 4-5 hours from start to finish, others may require more.

Here are some additional internet links for your reference:

OPGT:

<http://www.attorneygeneral.ius.gov.on.ca/english/family/pgt/guardian.pdf>

SDA legislation:

<http://www.attorneygeneral.ius.gov.on.ca/english/family/pgt/pgtsda.pdf>

Power of Attorney:

<https://www.attorneygeneral.ius.gov.on.ca/english/family/pgt/poa.pdf>

Health Care Decisions:

<http://www.attorneygeneral.ius.gov.on.ca/english/family/pgt/ISBN-0-7794-3016-6.pdf>

OPGT Investigations:

<http://www.attorneygeneral.ius.gov.on.ca/english/family/pgt//guardinvestigation.pdf>