




THE CAPACITY ASSESSMENT OFFICE

**Providence Care
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CAPACITY ASSESSMENT OFFICE

The Capacity Assessment Office (CAO) is a stand-alone office and is not part of the Office of the Public Guardian and Trustee.

The CAO is responsible for:

- Providing initial assessor training
- Maintaining a public list (roster) of qualified capacity assessors
- Providing consultation services and continuing education to qualified capacity assessors
- Administering a Financial Assistance Program
- Responding to public inquiries about capacity assessments

What is a capacity assessment?

- A designated capacity assessor at the request of an individual will try to determine whether a person's understanding of the issues is factually correct. For example, if a person is being assessed to determine their ability to manage their own finances, the assessor will find out whether they can accurately identify their income, assets, debts and other financial involvements. The assessor will help the person being assessed by giving them relevant information and testing how much the person can retain, interpret and use that information. The person's responses are then analyzed to see whether they demonstrate an "ability to understand" the information.

What is a capacity assessment? cont'd

- The assessor also looks at the choices the person being assessed is making (or not making) in order to determine whether the person appreciates the consequences of these choices and can explain why they made them. Assessors do not assume a person is mentally incapable simply because their choices are unusual or appear to be against their own interests or welfare. Similarly, the person's "ability to appreciate" the consequences of their choices is looked at in the context of the person's particular lifestyle, values and beliefs. The only important thing to look at is the person's level of mental functioning and their ability to reason and process information. In other words, a capable person is entitled to make choices that may be "bad".

When is a capacity assessment required?

- When less intrusive options have been exhausted, e.g., trusteeship, direct deposit/bill payments, etc.,
- If a person does not have a power of attorney and cannot make personal or financial decisions, another person may have to be given special legal authority to make decisions on their behalf. This authority is called “*guardianship*”
- A capacity assessor’s opinion may also be needed if a person has appointed a power of attorney that has a clause that states that their mental incapacity must be proven before that power of attorney comes into effect. If the person doesn’t say how their mental incapacity should be proven, a capacity assessor’s opinion is needed (letter of opinion)

Less Intrusive Options

If the person still has some capacity but may only need some help, less intrusive options should always be considered:

- Grant Continuing Power of Attorney for Property (CPOA) – free kits available online
 - <https://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/poa.pdf>
- Trusteeships are available for:
 - ODSP, OAS/ CPP, private pension
- Bank Power of Attorney
 - for banking purposes only
- Direct deposits and/or payments
- Informal assistance to pay bills, deposit/withdraw funds, shop for groceries, etc.

Continuing Power of Attorney (CPOA)¹

What is a Power of Attorney?

- A Power of Attorney is a legal document that gives someone else the right to make decisions on their behalf.

Who is allowed to make a CPOA?

- Anyone who is 18 years of age or older and who has the necessary level of mental capacity can make a CPOA.

Continuing Power of Attorney¹

What level of mental capacity is needed to make a CPOA?

Mental capacity, in this situation, means that you:

- know what property you have and its approximate value;
- are aware of your obligations to the people who depend on you financially;
- know what you are giving your attorney the authority to do;
- know that your attorney is required to account for the decisions they make about your property;
- know that, as long as you are mentally capable, you can revoke (cancel) this Power of Attorney;
- understand that if your attorney does not manage your property well its value may decrease; and
- understand that there is always a chance that your attorney could misuse their authority.

Capacity Assessor Roster

Rosters includes geographic location, second languages, professional qualifications and areas of expertise.

Rosters are available online:

<https://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/capacityoffice.php#list>

When choosing an assessor, consider:

- Matching the client's needs, preferences and the professional expertise of the assessor
- Proximity of assessor to the client's address
- Obtaining an estimate of costs from more than one assessor
- The assessor's availability

Cost of Assessment

- The requestor pays for the assessment
- Fees are determined by the assessor and their college fees guidelines
- Cost can range from \$600 to \$1,000+ depending on the complexity of the assessment
- Requestor may be able to recover the cost of the assessment from the incapable person's estate, if the Office of the Public Guardian and Trustee (OPGT) are appointed guardian of property, and only **if** funds are available
- Financial assistance to pay for the assessment may be available to low-income **individuals**, not agencies

Financial Assistance Program (FAP)

- Funding is through the CAO for individuals, not agencies
- FAP criteria:
 - low income
 - self-request
 - if not self-request, applicant must meet low-income threshold
 - assessment is required under SDA, except Section 20 (re-assessments are not eligible for funding)
- To request an FAP application contact the CAO at:
 - CAO@ontario.ca
 - 1-866-521-1033

Letter of Opinion

- Capacity assessors are only trained to complete capacity assessments under the SDA. The CAO does not train assessors on letters of opinion.
- Not all assessors will provide letters of opinion, so you will have to ask when you contact 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.
- 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.
- You may also require a letter of opinion when presenting a POA to a financial institution. Canadian banks are reluctant to accept a POA without some evidence of incapacity on the part of the grantor. (refer to ACE article, *Continuing Powers of Attorney for Property and Banks*).