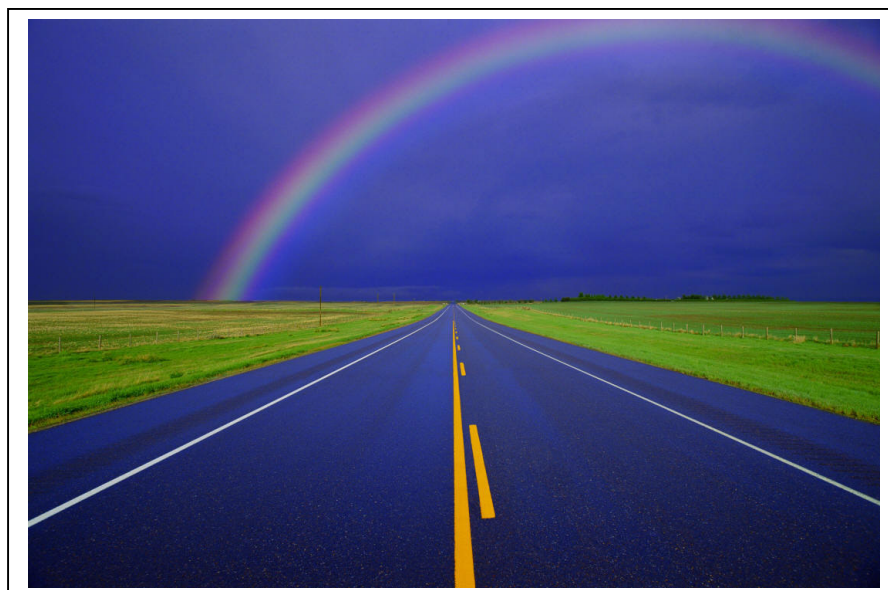


# **GUIDE TO PERSONAL CARE AND PROPERTY**



**For Older Adults  
with a Developmental Disability**



**2008**

**GUIDE TO PROPERTY AND PERSONAL CARE**  
For Older Adults with a Developmental Disability

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# **GUIDE TO PROPERTY AND PERSONAL CARE**

## **For Older Adults with a Developmental Disability**

### **I. OVERVIEW**

#### **Purpose of the Guide**

This guide has been written primarily to meet the information needs of caregivers. It provides an overview of personal care and property decisions to help caregivers orient themselves to the issues and identify available safeguards. Readers are encouraged to obtain more detailed information about particular safeguards from your local library, the Internet, government offices, not for profit resource centres, tax specialists, legal counsel and other existing publications. Some of these other sources are identified in the guide.

#### **Stories**

At first glance, the issues, legislation and regulations surrounding personal care and property issues may seem overwhelming. However, not all of these apply to every person or situation. We have included stories (case examples) about personal care and financial issues to illustrate specific circumstances and how support and/or protection was obtained through the various legal and procedural mechanisms covered in the guide. The stories section helps to put a human face on the issues surrounding personal care and property. Information and names have been altered to protect individual privacy and ensure confidentiality.

#### **Answers to Questions**

The guide includes a section on frequently asked questions about broad issues. Much of the information about personal care and property topics is presented using a question and answer format. There are also links so you can refer to applicable legislation on the Internet. Please note that web addresses change from time to time and you may have to do a search to find the current web site.

#### **Personal Care and Property Decisions**

Generally, the rules around personal care decisions are different from those pertaining to property. The guide's content is divided into two sections:

1. Personal Care Decisions: healthcare and personal needs.
2. Property Decisions: finances, disability pension, property, estate planning and taxation.

#### **Using the Guide with a Person with a Developmental Disability**

There are pictures throughout the guide that help to illustrate some of the issues and topics. In addition, there is a pictorial section that can be used as an aid to explain the broad concepts pertaining to substitute decision-making.

#### **Accuracy of Information**

The information in the guide has been assembled by a team that includes legal and care-giving experts. Every effort has been made to ensure the information is accurate at time of publication. However, government programs and legislation are subject to change. The reader is encouraged to seek out the most current information available before making any decisions.

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### **Acknowledgements**

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Additional copies of this guide can be obtained at cost from:

Ontario Partnership on Aging and Developmental Disabilities (OPADD)  
C/o Toby and Henry Battle Developmental Centre  
927 Clark Ave. West  
Thornhill, ON., L4J 8G6  
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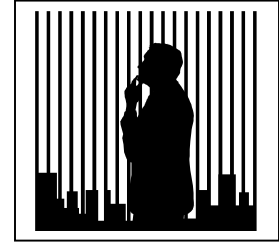
You may also download the guide from the website [www.opadd.on.ca](http://www.opadd.on.ca)

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## **II. ABOUT DECISION-MAKING**

### **A. THE RIGHT TO MAKE DECISIONS FOR ONESELF**

Every adult in Ontario has the right to make decisions for him/herself as long as he/she is mentally capable of making decisions.



### **B. FACTORS IN MAKING A DECISION**

Making a decision may include:

1. Talking to family and friends. For example, a decision to make a major purchase such as a television set may involve talking to a spouse or others in the household.
2. Talking to an expert. For example, a decision to undergo a medical procedure may involve talking to the physician about the reasons for the procedure, the risks associated with it and the expected outcomes.
3. Getting more information. For example, a decision to go on a diet may require information on nutritional requirements to ensure the diet chosen is safe and effective.
4. Consideration of personal values. For example, a decision to donate one's organs after death.
5. Thinking about one's future needs. For example, planning to appoint a substitute decision-maker to make health care decisions in the event that you become unable to make such decisions for yourself.

### **C. SUBSTITUTE DECISION-MAKERS**

If a person is not mentally capable of making a particular decision, then a substitute decision-maker should be in place to make decisions on the person's behalf. All adults are encouraged to appoint a substitute decision-maker in the event that they become mentally incapable of making important decisions about medical care, property or personal care through a serious illness or accident. The appointment of a substitute decision-maker is a safeguard available to every person.

The province of Ontario has legislation that governs the appointment and responsibilities of a substitute decision-maker in the event that an individual is unable to make decisions for him/herself. If the person does not appoint a substitute decision-maker the legislation allows the government to make an appointment on the person's behalf.

### **D. RULES FOR APPOINTING SUBSTITUTE DECISION-MAKERS**

Government legislation has defined four areas of decision-making:

#### **1. Personal Care**

Decisions about one's own health care, nutrition, shelter, clothing, hygiene and safety; definitions of capacity to make decisions and the appointment of a substitute decision-maker are governed by the *Substitute Decisions Act*.

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#### 2. Health Care

Decisions about treatment, admission to care facilities and personal assistance services; definitions of capacity to make decisions and the appointment of a substitute decision-maker are governed by the *Health Care Consent Act*.

#### 3. Mental Health Care

Decisions about mental health treatment; identification of treatments that apply, definitions of capacity and the appointment of a substitute decision-maker are governed by the *Mental Health Act*.

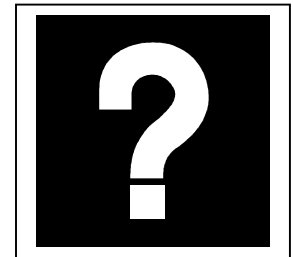
#### 4. Property

Decisions about property and finances; definitions of capacity to make decisions and the appointment of a substitute decision-maker are governed by the *Substitute Decisions Act*.

### E. FREQUENTLY ASKED QUESTIONS

#### Q. Are people with a developmental disability competent to make decisions for themselves?

A. Yes, many people with a developmental disability make their own decisions about finances and personal care. It is helpful when a young person with a developmental disability is taught to make his/her decisions and given opportunities to exercise this right.



#### Q. How do you tell when someone is competent to make his/her own decisions?

A. Generally, there must be a degree of agreement between the level of complexity of the decision and the level of the individual's cognitive ability. The more complex the decision, the higher the required cognitive ability.

A reasonable test for competency that can be carried out by the parents, follows:

Part 1: Ask your child, if she becomes ill and unable to make a decision about her health care, who would she want to make the decision. If she replies that she would want you as the parent(s) rather than naming just anyone else, then this may indicate a degree of competence to appoint a substitute decision-maker.

Part 2: If the child understands when she needs help and demonstrates a capacity to ask for it when required, this provides a second indication of competence to appoint one's own substitute decision-maker.

If both of these conditions exist then it is reasonable to consider the child competent to make her own decisions and to appoint a substitute decision-maker.

#### Q. Are developmental service agencies required to follow legislation pertaining to consent and substitute decision-making?

A. Many developmental service agencies operate programs that encourage independence and inclusion of people with developmental disabilities to the greatest extent possible. Based on this philosophy and practice, these agencies support people with a developmental disability to manage their own financial affairs including bank accounts, budgets and shopping. Agencies also support their clientele to understand and make decisions about their personal health care.

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However, in some cases the client may not be capable of making the decision, depending on its complexity. In these instances unless the agency staff person has been appointed by the Consent and Capacity Board, he/she does not have legal authority to make the decision on behalf of the client. It may be necessary that the agency ensure a staff person is appointed by the Consent and Capacity Board as a substitute decision-maker.

However, while an agency staff person can be appointed as a substitute decision-maker for property decisions, he or she may not be appointed to make personal care decisions. The *Substitute Decisions Act* stipulates that the substitute decision-maker for personal care may not be someone who is paid to provide the individual with health care, residential, social, training or support services unless the person is a spouse, partner or relative.

Developmental service agencies may not be fully aware of the legislation around substitute decision-making. Some agencies may believe that appointment of a substitute decision-maker would be a backward step to the client independence they have supported for so many years. Nevertheless, these agencies have a responsibility to adhere to substitute decision-making legislation and to help their clientele take advantage of available safeguards. As clientele age, these agencies have a responsibility to ensure that the interests of each client are protected in the event that the client cannot now or may in the future be unable to make decisions about personal care and finances.

#### **Q. Does a substitute decision-maker have to be appointed when a person moves to a long term care home?**

A. There is no law that requires an individual to appoint a substitute decision-maker or establish an advance directive (living will) at the time of admission to a long term care home. However, there are important considerations about both of these safeguards when moving to a long term care home.



In Ontario, access to long term care homes is coordinated by the regional Community Care Access Centre (CCAC). The CCAC case manager will require that the person seeking to move to the long term care home consent to the admission or have in place, a substitute decision-maker who can do so. If the person is not capable of appointing a substitute decision-maker, the CCAC may apply to the Consent and Capacity Board to make the appointment. Usually, the Consent and Capacity Board will prefer to appoint a family member who is involved with the individual. Where there is no family member or other appropriate person, the Board will appoint the Public Guardian and Trustee. Sometimes where there is a family member living some distance away from the individual, the family member may be asked to act as the substitute decision-maker for the admission only. Another substitute decision-maker(s) will then be appointed for personal care and property decisions after admission.

In the event that the person moving to the long term care home disagrees with the appointment of a substitute decision-maker he/she can go to the Consent and Capacity Board to request a review of his/her capacity to make decisions for personal care. The Consent and Capacity Board will arrange for a Capacity Assessor to determine whether the person is capable. The cost for this may vary depending on the assessor but will generally be about \$800.00. Where an individual is unable to pay this fee or is receiving ODSP, they may be eligible for Legal Aid assistance.



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#### **Q. Which forms should the person use to name a substitute decision-maker?**

A. The person making the appointment of a substitute decision-maker should be careful that the person appointed is clear about what he/she wants. The government of Ontario has kits available for the appointment of a substitute decision-maker through the execution of a legal document called a *Power of Attorney*. While these forms are helpful, the person should not rely simply on meeting the minimum information requirements since these may not be sufficient or suitable to safeguard his/her needs.

At the time of a move to a long term care home, the individual may be asked to complete a form provided by the CCAC or the long term care home to appoint a substitute decision-maker. Some of these forms may not provide for the level of detail that should be included in such appointments. The individual and family should seek independent advice and information before making any appointment. A lawyer can help with this and ensure the document includes provisions that truly protect the individual.

#### **Q. How can I find the various pieces of legislation referred to in the Guide?**

All Ontario Legislation is available on the Internet at  
<http://www.search.e-laws.gov.on.ca/en/search/>

The Ontario E-Laws site includes a search engine so you can easily find the piece of legislation that interests you. When you download an Act, the first page will be the table of contents. You can find the section you want by clicking on the link in the table of contents.

### **III. PERSONAL AND HEALTH CARE DECISIONS**

#### **A. STORIES ABOUT PERSONAL CARE ISSUES**

##### **Joan Plans for Her Future Health Care Needs**

Joan is in her late fifties. During the past year she has been diagnosed with a debilitating condition that will affect her independence. She has become aware that the nature of her condition will require making decisions about treatments. Joan is finding that it is sometimes difficult to understand the information about her condition and to make decisions about required treatments. Joan has talked about this with the family, friends and paid caregivers in her support circle. She has decided to ask for help with making health care decisions by appointing one of her family members as her substitute decision-maker for health care decisions. This substitute decision-maker will be given authority by Joan and will be able to make decision on Joan's behalf only when Joan is no longer able to do so for herself. The mechanism Joan will use is called the Power of Attorney for Personal Care.



Joan had initially thought she would like to appoint one of her favourite paid support workers to the role of substitute decision-maker for personal care. However when the support circle looked into it they discovered that the person could not be someone who is paid to provide the individual with health care, residential, social, training or support services unless the person is a spouse, partner or relative. Joan's younger nephew was also ineligible to become a substitute decision-maker for personal care since he was younger than sixteen years of age.

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Joan and her support circle gathered some information on the process of establishing a Power of Attorney. They learned that it was best to lay the groundwork for decision-making prior to identifying the substitute decision-maker. In this way Joan would be in a better position to know what she wanted the person to do and who would be best suited to the role.

The support circle scheduled a series of meetings to help Joan. At the first meeting they explored how Joan made her health care decisions. The group met a second time and asked Joan to talk about her beliefs, values and wishes so these could be known when a decision might be made on her behalf. A third meeting focused on having Joan identify the details of what she wanted a substitute decision-maker to do in the event that she could no longer make decisions herself. Then the group reviewed the various responsibilities that could be given and helped Joan decide which of these she wished to give to the substitute decision-maker for personal care. After this foundation was laid, Joan decided to appoint her older sister. Joan and her sister then made an appointment with the family lawyer to complete the Power of Attorney forms. While it was not a requirement to use a lawyer, the support circle felt this would be a good course of action since the lawyer, as an independent third party, could ensure the resulting legal document fully represented Joan's wishes.

Joan's Power of Attorney for Personal Care allowed the substitute decision-maker to make decisions related to health care, nutrition and safety. The scope of these decisions was fully defined in the Power of Attorney document. Joan could have also granted her older sister decision-making power related to shelter and clothing. However, Joan felt she would prefer to retain this decision-making power for herself. Joan continues to make her own health care decisions but involves her older sister more often in preparation for the day when Joan may be unable to decide for herself.

More information about the Power of Attorney for Personal Care can be found in this Guide: Section III B. - Personal Care: Power of Attorney For Personal Care.

### **Sarah Plans to Move From Her Group Home to a Long Term Care Home**

Sarah lives in a group home with support from staff of the local developmental services provider. Over the years Sarah has faced a number of health issues. The agency has required that Sarah's support worker provide guidance to her for health care decisions. In addition, the support worker has always attended medical appointments with her. This practice has been in place for more than thirty years.



At the age of 40, Sarah's health care needs began to change. Her support worker noticed that the emerging health issues required additional support for Sarah. The agency accommodated these changes over the next ten years and then began to find they could no longer do so. After several discussions with Anne's support circle, Anne decided she would move to a long term care home. The agency contacted the local CCAC for information about a move to a long term care home.

One of the pieces of information the CCAC required was the name of Sarah's substitute decision-maker for health care decisions. The agency provided the name of Sarah's principal support worker. The CCAC indicated that the support worker was not legally entitled to hold such a role and that Sarah would require a substitute decision-maker appointed under the *Health Care Consent Act*. The agency replied that the principal support worker did indeed fulfill such a role in accordance with agency policy and long-standing practice. The CCAC maintained its position

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and advised the agency that it could not complete the application process without a substitute decision-maker.

The developmental services provider investigated the provisions of the *Health Care Consent Act* and found that there was a list of possible substitute decision-makers who could be appointed, with the Guardian being at the top of the list. The agency advised the CCAC that it could be named a substitute decision-maker under the Act because the agency fulfilled the guardianship role for Sarah.

The CCAC refused to accept the agency's interpretation of the Act and sent the agency's Executive Director a letter outlining the legislative requirements that a substitute decision-maker be appointed under the *Health Care Consent Act* prior to admission. The CCAC correspondence noted that the Guardian could be a parent or legally appointed guardian but could not be a staff person of the developmental services agency. Finally, the letter advised the developmental services agency that if they were unable to identify a suitable substitute decision-maker, the appointment could be handled by the Consent and Capacity Board that is authorised to appoint representatives to make decisions for an incapable person with respect to admission to a care facility.

The Executive Director discussed the matter with Sarah's principal support worker. They agreed that it would be in keeping with their agency philosophy if Sarah was able to make the appointment rather than submitting the matter to the Consent and Capacity Board. Consequently, the Executive Director asked Sarah's principal support worker to investigate who, could be appointed by Sarah as a substitute decision-maker. When the principal support worker investigated Sarah's case file, she discovered that Sarah had no legally appointed guardian and had lost all contact with her parents when she had been placed in the Ontario government facility for people with a developmental disability at the age of five. However, Sarah had a close friend, Joanne, who was a member of Sarah's support circle. The support worker thought Joanne might be a possible substitute decision-maker.

The support worker reported these findings to the Executive Director. The support worker was directed to investigate with Sarah whether she would accept Joanne as the SDM. If she did, then Sarah would have to establish a Power of Attorney for Personal Care as provided by the Ontario legislation. The person appointed to this role by Sarah could then be identified as the substitute decision-maker for health care as required under the *Health Care Consent Act*.



Agency staff found these legal requirements complicated and confusing. However, they facilitated the arrangements with Sarah in order to move her long term care home application through the process.

The Executive Director realized that his agency was out of step with the evolving legal requirements around SDM. He discussed the problem with the Program Director. A few weeks later, the Program Director arranged a training session for staff on substitute decision-making. A representative of the Advocacy Resource Centre for the Elderly provided training and distributed an information booklet. Over the next several months the agency began to review the requirements of legislation and regulations governing substitute decision-making. This review led to an overhaul of agency policy and required additional staff training to help employees understand the resulting changes to their job responsibilities.

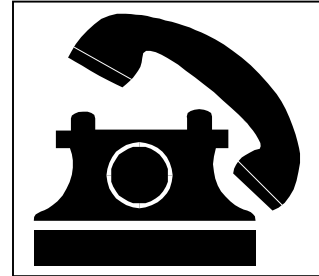
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More information about appointing a substitute decision-maker under the *Health Care Consent Act* and the role of the Consent and Capacity Board can be found in this Guide: Section III D. - Consent and Capacity Board and Section III F. - Health Care: Requirements Under the *Health Care Consent Act*.

#### **Community Living Service Provider Wants to be in the Communication Loop on Louanne's Hospital Discharge**

Louanne became seriously ill and entered hospital for an extended stay. The service provider operating the group home where Louanne lived kept her bed available so she could return home following hospitalization. A couple of years earlier, Louanne had appointed her mother, Belinda, as Power of Attorney for Personal Care. Belinda was approached by the hospital for consent on some of Louanne's health care decisions when Louanne was unable to provide consent herself. Belinda was suffering with a mental health problem that sometimes hampered her ability to focus on the consent process on behalf of her daughter. Consequently, Louanne's brother became involved in communications from the hospital and provided help to his mother in exercising Louanne's Power of Attorney for Personal Care.



The agency operating the group home discovered that Louanne's discharge plan was proceeding and a discharge date was being considered. However, the agency had not received any communication from the hospital and Louanne's brother was unaware of the agency's support role with Louanne. The agency contacted Louanne's mother but discovered she was unable to communicate clearly about the discharge plan. The agency became concerned that they would be unable to plan ahead for appropriate staffing and other support that Louanne would need when she returned to her home. Subsequently, the agency Program Director arranged a meeting of the hospital discharge staff with Louanne's mother and brother. The discussion resulted in the discharge plan being shared with the agency and an agreement to include them in the communication loop. For more information about Power of Attorney for Personal Care turn to Section III B. - Personal Care: Power of Attorney for Personal Care.

## **B. PERSONAL CARE: POWER OF ATTORNEY FOR PERSONAL CARE**

### **What is the Power of Attorney for Personal Care?**

In a Power of Attorney for Personal Care, an individual appoints another person to make personal care decisions on his/her behalf in the event that the individual becomes unable to do so. The Power of Attorney for Personal Care is a legal document. The *Substitute Decisions Act* provides legislative authority for individuals to appoint Powers of Attorney for Personal Care. The Act also sets out guidelines for attorneys to follow in making personal care decisions on behalf of an individual.

### **Why is it important to consider appointing a Substitute Decision-Maker for Personal Care as one gets older?**

Getting older may require changes in how a person makes decisions about the care he/she receives. For example, a chronic health condition may interfere with an individual's ability to understand the choices he/she faces and to make a decision for needed care. An accident could cause a sudden change in an individual's decision-making capacity.

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All adults in Ontario are encouraged to identify an Attorney for Personal Care (substitute decision-maker) who can make certain decisions if required. The Power of Attorney document provides a safeguard against decisions being made by others who do not know the person well.

#### How is a Power of Attorney put in place?

There is no single formula for choosing the substitute decision-maker. It must be done with due consideration for the needs of the individual and who can best ensure the individual's wishes are respected if he/she cannot make personal care decisions. There are also some legal requirements that limit who can become a substitute decision-maker.

The process of giving authority to someone else for personal care decisions can include the following steps:

1. Describe in detail how decisions are made now.
2. Review with the person, what is important to him/her (beliefs, values, preferences and wishes).
3. Identify the details of what the person wants a substitute decision-maker to do in the event that he/she can no longer make decisions.
4. Identify the substitute decision-maker(s).
5. Create the Power of Attorney.

A document that assigns the Power of Attorney is signed and dated by the person appointing the attorney. Two witnesses must watch the person do this and then must sign the document in the presence of that person and in the presence of each other. The resulting legal document is known as a Power of Attorney for Personal Care. The witnesses must be at least 18 years old and may not be the spouse or child of the person granting the power of attorney, the person appointed as the attorney or his or her spouse.

#### Why should a lawyer be involved in establishing a Power of Attorney?

Since the Power of Attorney is a legal document and the appointment of substitute decision-maker(s) is a very significant event, it is recommended that a lawyer be consulted in all cases. The lawyer can provide help with final wording to ensure it is done correctly and that the person's wishes are fully protected.



#### What if the older adult cannot name the Substitute Decision-Maker?

In the case of some adults with a developmental disability who are unable to identify the decision-maker, it may be necessary for a guardian of the person to be appointed by the Consent and Capacity Board. The Board can appoint for personal care decisions under the *Health Care Consent Act* and for property decisions under the *Substitute Decisions Act*. For more information on the Board see Section III D. - Consent and Capacity Board.



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#### What can the Substitute Decision-Maker do?

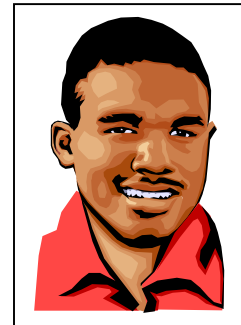
Power of Attorney for Personal Care allows the substitute decision-maker(s) to make decisions related to personal care, such as health care, shelter, clothing, nutrition and safety. The scope of these decisions is defined in the Power of Attorney document.

A companion document to the Power of Attorney for Personal Care is the Health Care Directive, also known as a “Living Will”. The Health Care Directive is the means by which an individual gives directions about medical treatment to health care providers. A copy of the Directive should be provided to the Attorney for Personal Care so he/she is clear about the individual’s treatment preferences. For more information on Health Care Directives see Section III C. - The Health Care Directive.

#### Who can be an Attorney for Personal Care?

The person named as attorney for personal care must:

- Not be someone who is paid to provide the individual with health care, residential, social, training or support services unless the person is a spouse, partner or relative.
- Be mentally capable.
- Be at least 16 years of age.



#### Can more than one person be named as a Substitute Decision-Maker?

If the person names more than one Attorney for Personal Care then they must also specify how the parties are to make decisions about personal care. There are three options available when there is more than one attorney.

1. Joint Decisions: substitute decision-makers must make any decisions together or jointly. No one attorney can act alone.
2. Several Decisions: any one of the substitute decision-makers may make a decision on his/her own.
3. Joint and Several Decisions: substitute decision-makers can act alone or together depending on circumstances such as who is most readily available.

#### What if an Attorney for Personal Care has not been appointed?

The legislation provides for a hierarchy of individuals who may make certain types of personal and health care decisions for the incapable person. In the event that no one has been appointed by the individual as an Attorney, the courts will determine who may be appointed as guardian. While the court appointment provides some protection for the individual, it may be less suitable than an appointment made by the person him/herself.

#### When does the Power of Attorney for Personal Care take effect?

The Power of Attorney for Personal Care can be created at any time. However, the power of the substitute decision-maker does not come into effect until the person becomes mentally incapable of making decisions for his/her own personal care. Prior to that time, the Power of Attorney can

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be used to allow the Attorney (the person named as substitute decision-maker) to give and receive information about the individual with service providers. This kind of arrangement allows the Attorney to remain in the communication loop about the individual's care and health status.

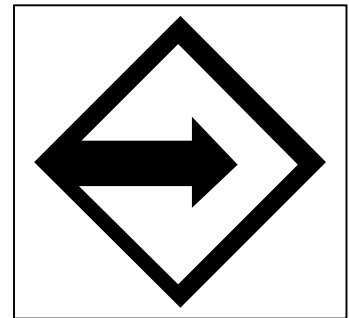
#### Where can I find more information on Power of Attorney for Personal Care?

- **Community Legal Education Ontario (CLEO)** Tel: 416-408-4420 or on the web at [www.cleo.on.ca](http://www.cleo.on.ca) [click on publications; then click on health and disabilities; scroll down the page; then click on Continuing Power of Attorney for Personal Care].
- **Advocacy Centre for the Elderly (ACE)** Tel: 416-598-2656 or on the web at [www.advocacycentreelderly.org/](http://www.advocacycentreelderly.org/) [click on powers of attorney and related issues; at the bottom of the next page you can click on ACE publications for a selection of pdf documents on the subject of substitute decision-making].
- **Government of Ontario**  
[http://www.e-laws.gov.on.ca/browse\\_E.asp?lang=en](http://www.e-laws.gov.on.ca/browse_E.asp?lang=en)  
View and print the *Substitute Decisions Act* that governs Power of Attorney for Personal Care.
- Speak to a lawyer.

## C. THE HEALTH CARE DIRECTIVE

The Health Care Directive, also referred to as a "Living Will", gives directions about medical treatment to treatment providers. It comes into effect when an individual is no longer able to make and communicate his/her own health care decisions. There are two kinds of health care directives:

1. Gives specific directions to treatment providers as to the treatments that the individual consents to or refuses, should the person one day be unable to make a health care decision on his/her own.
2. Names another person (called a "proxy") to make health care decisions as a substitute decision-maker (Power of Attorney for Personal Care) if and when the individual cannot make a health care decision him/herself.



The directive can also be a combination of both these types, including specific treatment directions for certain situations, as well as a proxy named for other health care decisions.

#### Who can make a directive?

Any person over the age of 16 who is able to make his/her own health care decisions can write a directive. A directive is especially useful to terminally ill and elderly individuals who have specific directions about treatment that they would like honoured as death approaches.

#### How can a health care directive be prepared?

There are several things to consider when preparing a health care directive:

- It may be hand-written or typed.
- It must be signed and dated.

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- Make the instructions as clear and as detailed as possible so treatment providers are able to understand and follow it without questioning its meaning.
- Discuss the directions with those who may become involved when the directive is needed. Talk with the proxy if one is named, with family members or close friends and the doctor.
- If naming a proxy, record his/her full name, address and phone number.



#### **Where should the directive be kept?**

In the person's wallet with copies to the proxy, doctor, family and close friends.

#### **Can a directive be changed or cancelled?**

- Written changes must be signed and dated by the individual making the directive.
- A directive may be cancelled by writing "Cancelled" on the document. In an emergency, the individual can also tell another person that they no longer want to follow the directive.
- A new directive may be prepared at any time to replace the old one.

#### **Who needs to know about changes to the Directive?**

Anyone who has received a copy of the original Directive should be advised of any changes or cancellation. It is important that the Attorney for Personal Care receive a copy of the revised Directive or notice of cancellation.

## **D. CONSENT AND CAPACITY BOARD**

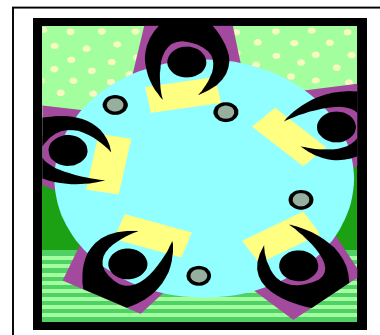
#### **What is the Consent and Capacity Board?**

The Consent and Capacity Board is an independent body created by the provincial government of Ontario to provide a review process in areas of substitute decision-making. Board members include psychiatrists, lawyers and members of the general public appointed by the Lieutenant Governor in Council. The Board sits with one, three, or five members. Hearings are usually recorded in case a transcript is required.

#### **What legislation governs the Consent and Capacity Board?**

The Consent and Capacity Board was created under the *Mental Health Act*. The Board was given power to conduct hearings in areas of substitute decision-making related to several pieces of legislation:

- *Mental Health Act*.
- *Health Care Consent Act*.
- *Personal Health Information Protection Act*.
- *Substitute Decisions Act*.





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#### **What does the Consent and Capacity Board have the authority to do?**

The Board has the authority to hold hearings to deal with specific matters under each of four pieces of legislation.

##### ***Health Care Consent Act:***

- Review of capacity to consent to treatment, admission to a care facility or personal assistance service.
- Consideration of the appointment of a representative to make decisions for an incapable person with respect to treatment, admission to a care facility or a personal assistance service.
- Consideration of a request to amend or terminate the appointment of a representative.
- Review of a decision to admit an incapable person to a hospital, psychiatric facility, nursing home or home for the aged for the purpose of treatment.
- Consideration of a request from a substitute decision maker for directions regarding wishes.
- Consideration of a request from a substitute decision maker for authority to depart from prior capable wishes.
- Review of a substitute decision maker's compliance with the rules for substitute decision making.

##### ***Mental Health Act:***

- Review of involuntary status (civil committal).
- Review of a Community Treatment Order.
- Review as to whether a young person (aged 12 to 15) requires observation, care and treatment in a psychiatric facility.
- Review of a finding of incapacity to manage property.

##### ***Personal Health Information Protection Act:***

- Review of a finding of incapacity to consent to the collection, use or disclosure of personal health information.
- Consideration of the appointment of a representative for a person incapable of consenting to the collection, use or disclosure of personal health information.
- Review of a substitute decision-maker's compliance with the rules for substitute decision-making.

##### ***Substitute Decisions Act:***

- Review of statutory guardianship for property.

#### **Where can I find more information on the Consent and Capacity Board?**

An explanation of the role of the Consent and Capacity Board is available at:  
<http://www.ccboard.on.ca/english/publications/documents/overview.pdf>

The Consent and Capacity Board has a number of more detailed publications on their website that explain what the board does. These are available at:  
<http://www.ccboard.on.ca/scripts/english/publications/infosheets.asp>



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### E. CAPACITY ASSESSMENTS

#### What is a capacity assessment?

Capacity Assessment is the formal assessment of a person's mental capacity to make decisions about property and personal care. Under the *Substitute Decisions Act*, a number of situations require capacity assessments to be conducted by specially qualified assessors who must follow specific guidelines.

#### Who is responsible for capacity assessments?

The Capacity Assessment Office of the Ministry of the Attorney General is responsible for the training of capacity assessors, considering applications for financial assistance from those unable to pay the full cost of a required assessment and the development of the assessment guidelines.

#### On what basis are capacity assessments done?

Capacity assessments are guided by a number of ethical and legal considerations. Ethical principles of assessment include:

- The right to self determination.
- Presumption of capacity.
- Decisional capacity (the individual's capacity for decision-making).
- Incapacity is domain specific (incapacity may pertain only to certain types of decisions)
- Guardianship as a last resort.

The Assessor must evaluate the individual's capacity as follows:

1. The Assessor determines pressures or demands on the individual based on a review of his/her personal living arrangements as well as personal and financial circumstances.
2. The Assessor determines how well the person is meeting these demands or pressures, either independently or with assistance.
3. If there is evidence of current or predictable inadequate functioning the Assessor will evaluate the individual's capacity to understand and reason about his/her options.

#### What is the process for conducting a capacity assessment?

Capacity assessments must follow a prescribed process:

1. Referral Information and Informant Interview  
Information about the individual is received and an initial interview conducted to establish rapport.
2. Capacity Interview  
Exploration of the individual's understanding of the issues and knowledge in making decisions.
3. Records Review  
The individual's perceptions and reports are cross-referenced with other information on record; such records may include observations, assessments and reports of care professionals.

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#### 4. Formulating an Opinion

The assessor considers all of the information relative to whether the person meets the standard of ability to understand information relevant for personal care/financial decision-making and appreciates foreseeable consequences.

#### 5. Reporting

The Assessor prepares a statement of capacity or incapacity or a Certificate of Incapacity using prescribed forms.

### **Where Can I find more information about Capacity Assessments?**

The Attorney General of Ontario maintains a web page dealing specifically with Capacity Assessments at <http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/capacity.asp>

The following documents can be viewed online or downloaded:

- The Capacity Assessment Office, Questions and Answers.
- Capacity Assessment Guidelines.
- Capacity Assessment Forms.

For information about arranging a capacity assessment, how to apply for financial assistance if you cannot pay the full cost of an assessment, or enquiries about assessors, or assessor training call: (416) 327-6766 or 1-866-521-1033.

## **F. HEALTH CARE: REQUIREMENTS UNDER THE HEALTH CARE CONSENT ACT**

### **Do individuals have the right to consent or not consent to treatment?**

The Supreme Court of Canada has confirmed the fundamental right of the individual to decide which medical interventions he/she will accept. The rights of the patient and the responsibilities of physicians and health care practitioners are spelled out in the *Health Care Consent Act of Ontario* (HCCA).

### **Is consent required for all treatment?**

Consent is required for any treatment except treatment provided in certain emergency situations. The health care practitioner who proposes the treatment is responsible for taking reasonable steps to ensure that treatment is not administered without consent.

### **What are the health care practitioner's responsibilities in obtaining consent?**

Health care practitioners are accountable for obtaining client consent when providing care. Under the *Health Care Consent Act*, there is no minimum age for giving consent. The health care practitioner should use professional judgment, taking into account the circumstances and the client's condition, to determine whether the client has the capability to understand and appreciate the information relevant to making the treatment decision. If the client is incapable of giving consent, then consent must be obtained from a substitute decision-maker. In the case of a child, this is most likely the custodial parent or guardian.

The *Health Care Consent Act* requires that each health practitioner follow guidelines established by his/her applicable governing body in obtaining consent. One of the requirements of such guidelines is that in cases where the health practitioner finds a person incapable to provide consent, the health practitioner must explain the consequences of this to the person.

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While the Act indicates consent may be explicit or implied, the College of Physicians and Surgeons strongly advises physicians to obtain express consent from the patient. The critical element of the consent process is the information given to the patient by the physician. Signed consent forms are simply documentary confirmation that the consent process has been followed and the patient has agreed to the proposed treatment. Physicians are advised to note in the patient's record that consent has been obtained by noting what went into the decision-making process. Likewise, physicians should note in the patient's medical record if the patient has refused consent and the discussion that took place.

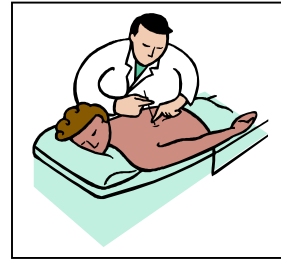
#### **Which disciplines are considered to be health care practitioners under the Act?**

The *Health Care Consent Act* defines "health practitioners" as those who belong to a recognized professional college. The Act provides a full list of practitioners. Some of them are Audiologists, Speech Pathologists, Chiropractors, Chiropractors, Dental Hygienists, Dentists, Dental Surgeons, Dietitians, Massage Therapists, Medical Laboratory Technologists, Medical Radiation Technologists, Midwives, Naturopaths, Nurses, Occupational Therapists, Optometrists, Physicians, Physiotherapists, Psychologists and Respiratory Therapists.

#### **How is consent to treatment obtained?**

There are three parts to the process:

1. Assessing capacity.
2. Obtaining consent.
3. Providing treatment.



The steps in the process are summarised below:

- a. The health practitioner proposes a treatment to an individual and determines if the patient is capable of providing informed consent to the treatment. The health care practitioner assesses whether the patient knows who they are, where they are, what is being proposed, and the consequences of the decision they are being asked to make.
- b. If the patient is capable, the health care practitioner must provide information about the treatment.
- c. The patient then either provides consent or refuses the treatment.
- d. If the patient consents, then the health care practitioner proceeds with the treatment until the patient's capacity changes or the treatment changes.
- e. If the patient is determined to be incapable, then the health care practitioner must identify the substitute decision-maker and go through the same process to obtain consent.

#### **What is the scope of the assessment for consent to treatment?**

The health practitioner's assessment of capacity must focus on whether the patient has the ability to understand the nature and effect of the treatment being proposed, not the "global" capacity of the person.

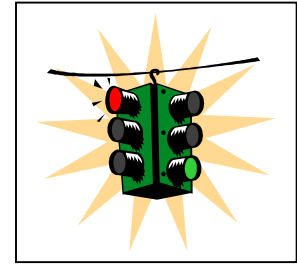
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#### Under what conditions can a person's capacity to consent change?

The *Health Care Consent Act* recognizes that a person's capacity to consent may change for two reasons:

1. Due to the passage of time and a change in the person's capacity.
2. Due to the nature and complexity of a specific treatment decision.



#### When does the consent to treatment process come into play?

The consent to treatment process comes into play when either of two things occur:

1. When a treatment is proposed or there is going to be a change in the treatment.
2. There is a change in the person's ability to understand the nature and effect of the treatment.

#### Can a person withdraw consent after it is given?

A person who is capable of providing consent is also capable of withdrawing consent to the treatment.

#### How do we know if consent is valid?

Four conditions must be present for consent to treatment to be valid:

1. Consent must be related to treatment.

Subsection 2 (1) of the *Health Care Consent Act* sets out definitions, which apply to consent to treatment. Briefly, treatment is "anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other health-related purpose, and includes a course of treatment, plan of treatment or community treatment plan..."

2. Consent must be informed.

A health practitioner must provide a patient with information about the nature of the treatment, its expected benefits, its material risks and side effects, alternative courses of action and the likely consequences of not having the treatment. A health practitioner is not to assume either that a patient has sufficient background to understand treatment without any explanation or is not interested in the information. If the patient requests additional information, he or she must receive a response.

3. Consent must be voluntary.

Consent cannot be given under duress. The patient must be acting for him or herself. If a health care practitioner believes otherwise, they should ensure that there has been no coercion.

4. Consent must not be obtained through fraud or misrepresentation.

In conveying the information about the treatment to a patient, a health care practitioner must be frank and honest.

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#### How is a substitute decision-maker identified under the Health Care Consent Act?

If the health practitioner determines that a patient is incapable of consenting to a treatment, the health practitioner must identify and obtain consent from an appropriate substitute decision-maker. The Act sets out the following hierarchy of individuals/agencies who may give or refuse consent:

1. Guardian.
2. Attorney for personal care.
3. Representative appointed by Consent and Capacity Board.
4. Spouse or partner.
5. Child or parent or individual/agency entitled to give or refuse consent instead of a parent (this does not include a parent who has only a right of access).
6. Parent with right of access only.
7. Brother or sister.
8. Any other relative (related by blood, marriage or adoption).
9. Public Guardian and Trustee.



The highest-ranking person on this list, if available, capable and willing, is the substitute decision-maker for the incapable person. If there is disagreement between persons described within each numbered item of this list, which cannot be resolved, then the Public Guardian and Trustee may be called upon to make the decision.

#### What is the health practitioner's responsibility to the substitute decision-maker?

A health practitioner must provide the substitute decision-maker with the information that would otherwise have been given to the patient to enable him or her to make an informed decision as to consent.

#### How does the substitute decision-maker make a decision?

The substitute decision-maker must make a decision which complies with the most recent wish expressed by the person, while capable, if the following criteria are met:

1. The person was at least 16-years-old at the time.
2. The wish applies to the circumstances and it is not impossible to comply with the wish. The substitute decision-maker must reflect on what the patient, if capable, would have wanted.

In the event the substitute decision-maker does not know of any wish that meets these criteria, he or she must act in the incapable person's best interests by considering:

1. Any values and beliefs the incapable person held while capable;
2. Any wishes the incapable person expressed; and
3. The nature and likely effects of both providing and withholding the proposed treatment.

#### Are there safeguards to ensure the substitute decision-maker acts in accordance with the Health Care Consent Act?

A health practitioner must consider whether the substitute decision-maker is complying with the principles set out in the *Health Care Consent Act*. If a health practitioner is of the view that the substitute decision-maker is not acting in accordance with the *Health Care Consent Act*, he or she can call the Office of the Public Guardian and Trustee.

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#### **Does the patient have a role when there is a substitute decision-maker involved?**

The health practitioner must still involve the patient when there is a substitute decision-maker. An example of this involvement is provided by the guidelines for members of The College of Physicians and Surgeons, which advises physicians to take the following steps:

1. Tell the patient that a substitute decision-maker will assist the patient in understanding the proposed treatment and will be responsible for making the final decision.
2. Involve the patient, to the extent possible, in discussions with the substitute decision-maker.
3. If the patient disagrees with the need for a substitute decision-maker or disagrees with the involvement of the present substitute, the physician must advise the patient of his or her options. These include finding another substitute of the same or more senior rank and/or applying to the Consent and Capacity Board for a review of the finding of incapacity. The physician is also advised to assist the patient if he or she expresses a wish to pursue one of these options.

#### **How is consent obtained in an emergency?**

The *Health Care Consent Act* states "there is an emergency if the person for whom the treatment is proposed is apparently experiencing severe suffering or is at risk, if the treatment is not administered promptly, of sustaining serious bodily harm." If possible, a health practitioner must obtain consent from a patient before providing treatment even in an emergency situation.

#### **Can emergency treatment be given without consent?**

There are provisions for obtaining consent in an emergency, from both a capable person and an incapable person.

##### **A. IN THE CASE OF A CAPABLE PERSON**

A treatment may be given without consent to an apparently capable person in an emergency if in the opinion of the health practitioner:

- It is not possible to communicate the relevant information to the patient because of a language barrier or because the person has a disability that prevents the communication from taking place.
- Steps have been taken to find a means of communicating but no such means has been found.
- The delay required to finding a means to communicate will prolong the patient's suffering or will put the patient at risk of sustaining serious bodily harm.
- There is no reason to believe that the person does not want the treatment.

##### **B. IN THE CASE OF AN INCAPABLE PERSON**

A treatment may be given to an incapable person without consent if in the opinion of a health practitioner there is an emergency and the delay required to obtain a consent or refusal on the person's behalf will prolong the person's suffering or will put the person at risk of sustaining serious bodily harm.

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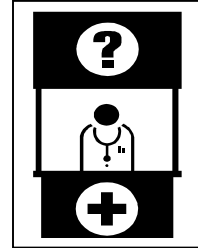
#### Where can I find more information about the Health Care Consent Act?

College of Nurses of Ontario Practice Guideline: Consent - on the web at  
[http://www.cno.org/docs/policy/41020\\_consent.pdf#search=%22Health%20care%20consent%20act%22](http://www.cno.org/docs/policy/41020_consent.pdf#search=%22Health%20care%20consent%20act%22)

College of Physicians and Surgeons of Ontario – Consent to treatment policy:  
on the web <http://www.cpso.on.ca/Policies/consent.htm>

Government of Ontario - Full text of the *Health Care Consent Act*: on the web  
[http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/96h02\\_e.htm](http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/96h02_e.htm)

Advocacy Centre for the Elderly Newsletter on Consent to Treatment  
<http://advocacycentreelderly.org/pubs/newsletter/newsletterfall2003.pdf>



#### G. MENTAL HEALTH: REQUIREMENTS UNDER THE MENTAL HEALTH ACT

##### What does the Mental Health Act cover?

The *Mental Health Act* governs admission, capacity, consent and patient rights when a person requires treatment in a psychiatric facility. Admission may occur in one of three ways: voluntary, involuntary and informal. The Act also sets out requirements for a person to receive treatment in a community mental health program where a hospital admission is not necessary.

##### What is voluntary admission to a psychiatric facility?

A voluntary patient is a person who feels that they need help with the problems they are experiencing and voluntarily enter a hospital. A voluntary patient can leave at any time that they wish, just like any person in a general hospital.

A voluntary patient may become an involuntary patient if the criteria are met and the attending physician signs a certificate of involuntary admission.

##### What is involuntary admission to a psychiatric facility?

An involuntary patient is one who has been declared by a physician to be in need of hospital services and is ordered to spend a period of time in hospital receiving treatment. The patient is not free to leave hospital at will. The length of stay is prescribed and may be increased in specific steps.

##### What are the steps in an involuntary admission?

The *Health Care Consent Act* stipulates three steps in the involuntary admission process:

1. A physician completes an Application for Psychiatric Admission, known as a "Form 1". This allows the person to be kept in hospital for up to 72 hours.
2. If there is reason to keep the person in hospital beyond 72 hours, an extension can be permitted if a second physician agrees and completes a Certificate of Voluntary Admission, known as a "Form 3". This allows the individual to be kept in hospital for an additional 2 weeks. In order for the second physician to complete the Form 3 he must be of the opinion



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that: the patient is suffering from a mental disorder "of a nature and quality that likely will result in serious bodily harm to the person, or another person, or imminent and serious physical impairment of the person" unless the patient remains in a psychiatric facility.

3. If there is reason to keep the person in hospital for more than two weeks after the Form 3 period expires, a Certificate of Renewal, known as a "Form 4" can be completed for an additional 1 month. This Certificate of Renewal can be extended as required for 2 months and subsequently for 3 months.

#### **Does the patient have any rights for review of involuntary admission?**

After each new certificate is completed the patient has the right for a review of the certificate by the Review Board and the review is mandatory after the fourth certificate even if not requested by the patient.

#### **Can a patient's involuntary status be changed to voluntary?**

A patient's admission status can change from involuntary to voluntary either:

- Automatically when a certificate of involuntary status expires and no subsequent certificate is completed; or
- When a physician uses a Form 5 (Change to Informal or Voluntary status) at any time to change the patient's status from involuntary to voluntary.

#### **What is an "informal patient"?**

"Informal patient" means a person who is a patient in a psychiatric facility, having been admitted with the consent of another person under section 24 of the *Health Care Consent Act, 1996*.

A person may be admitted as an informal patient when:

- The person is under the authority of a parent, guardian, or a committee of the person appointed under the *Health Care Consent Act*; and
- The attending physician is of the opinion that such a person is suffering from a mental disorder and is in need of treatment from a psychiatric facility.

#### **What are Community Treatment Orders (CTOs)?**

Community Treatment Orders provide an alternative to involuntary admission to hospital. A CTO may be issued by a physician to provide a person posing a risk to themselves or others to get the care and treatment they need through a community mental health program that is less restrictive than being detained in a hospital environment.

The CTO may be issued when the person:

- Is suffering from a serious mental disorder and has a history of repeated hospitalizations; and
- Meets the committal criteria for the completion of an application by a physician for a psychiatric assessment in the *Mental Health Act*.

A CTO may also be issued in the care of an involuntary psychiatric patient who agrees to a treatment/supervision plan as a condition of their release from a psychiatric facility to the community.

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#### What are the criteria for issuing a CTO?

A CTO may be issued when:

- The person has a prior history of hospitalization;
- A community treatment plan for the person has been made;
- The person has been examined by a physician within 72 hours prior to entering into the CTO plan;
- The person has the ability to comply with the CTO;
- There has been consultation of the person and the person's substitute decision-maker, if any, with a rights adviser; and
- There is consent by the person or the person's substitute decision-maker to the community treatment order.

#### How long does the CTO remain in effect?

CTOs are valid for six months unless they are renewed or terminated at an earlier date:

- By the physician upon the request of the person or his or her substitute decision-maker;
- Where the person fails to comply with the CTO; or
- When the person or his or her substitute decision-maker withdraws consent to the community treatment plan.



#### Are there safeguards that protect a person subject to a CTO?

The rights of a person subject to a CTO include:

- Right of review by the Consent and Capacity Board with appeal to the courts each time a CTO is issued or renewed;
- A mandatory review by the Consent and Capacity Board every second time a CTO is renewed;
- A right to request a re-examination by the issuing physician to determine if the CTO is still necessary for the person to live in the community;
- A right of review of findings of incapacity to consent to treatment; and
- Provisions to receive advice about their rights such that participation under the order is voluntary and informed and the consent is not "coerced."

#### Are there safeguards that govern when a physician can give treatment?

The *Health Care Consent Act* legislates when physicians can give treatment. Physicians cannot administer treatment unless the person or his/her substitute decision-maker has given consent that::

1. Relates to the treatment;
2. Is informed;
3. Is given voluntarily; and
4. Has not been obtained through misrepresentation or fraud.

#### Are there safeguards to protect the confidentiality of patient records?

The *Mental Health Act* recognizes that patients in a psychiatric facility or people who have been patients in a psychiatric facility have the right to expect that their clinical records will remain

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confidential. The Act requires that there will be no disclosure of the record except in accordance with specified exceptions. Generally, the exceptions allow disclosure of the record to those persons who are actively involved in the treatment of the patient.

#### What are the safeguards for patients in psychiatric facilities?

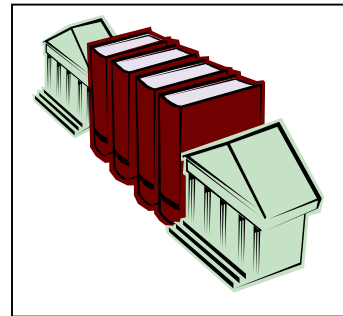
All patients in psychiatric facilities have the right to expect both that psychiatric treatment will be available and that all of their rights will be respected. They also have the right to refuse treatment.

When a patient who is capable to make a treatment decision refuses treatment, and they may do so at any time, the psychiatric facility must respect that refusal. It does not matter whether the patient is voluntary, involuntary, or informal. The only issue is whether they are deemed to be capable.

The attending physician may make a determination that the individual is incapable to make treatment decisions. In this case, substitute consent can be provided by the proper substitute consent giver. Under the *Mental Health Act* a patient can appeal the finding of incapacity by filling out a Form A under the *Health Care Consent Act* requesting that the Capacity and Consent Board review the finding of incapacity. For more information about the Consent and Capacity Board see Section III D. – Consent and Capacity Board, in this Guide.

Capacity of the person subject to treatment in a psychiatric facility or under a CTO falls under two pieces of legislation:

1. The *Mental Health Act*, which governs two areas of mental competence: competence to permit disclosure of the patient's clinical record; and competence to gain access to one's own clinical record.
2. The *Health Care Consent Act*, which deals with defining patients as being either capable or incapable with respect to consenting to or refusing treatment.



#### Where can I find more information on mental health legislation and regulations?

- **Government of Ontario E-Laws**  
<http://www.search.e-laws.gov.on.ca/en/search/>
- **Ministry of Health and Long Term Care**  
<http://www.health.gov.on.ca/>
- ***Mental Health Act***  
[http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90m07\\_e.htm](http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90m07_e.htm)
- **Mental Health Forms**  
[http://www.health.gov.on.ca/english/public/forms/form\\_menus/mental\\_fm.html](http://www.health.gov.on.ca/english/public/forms/form_menus/mental_fm.html)
- **Community Treatment Orders**  
<http://www.ppao.gov.on.ca/inf-com.html>
- **Consent and Capacity Board**  
<http://www.ccboard.on.ca/>

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- **Canadian Legal Information Institute**  
Provides decisions of the Consent and Capacity Board at: <http://www.canlii.org/on/cas/oncccb/>
- **Brian's Law (Bill 68)**  
Amended the *Mental Health Act* in 2000. Available at:  
<http://www.health.gov.on.ca/english/public/pub/mental/faq.html>
- **Psychiatric Patient Advocate Office**  
Provides information on the office and a number of guides on mental health topics at:  
<http://www.ppao.gov.on.ca/> Once on the web site you can access the information guides by clicking on "info guides" at the top of the page.

## IV PROPERTY AND FINANCE DECISIONS

### A. **STORIES ABOUT FINANCIAL ISSUES**

#### **Jimmy Wants To Make Decisions About His Own Money**

Jimmy lives at home with his parents and has a part time job. His mom and dad are now in their 80's. Jimmy receives some support through a Supported Independent Living Program operated by an agency serving people with developmental disabilities. The worker has met with the family to discuss planning for Jimmy when they are no longer able to do so. The family had previously planned that Jimmy would continue to live in the home after they die. After meeting with Jimmy's worker they are considering the appointment of a substitute decision-maker for property who can make financial decisions on Jimmy's behalf. They have heard about the Ontario Office of the Public Guardian and Trustee and are thinking that they should contact the Office to arrange something for Jimmy. The worker has told them about the Power of Attorney for Property and has left a booklet that explains how a substitute decision-maker can be appointed under the *Substitute Decisions Act*. They are unsure of the best course of action.



Jimmy's parents arrange a visit with their lawyer to seek advice on whether to use the Office of the Public Guardian and Trustee or whether to set up a substitute decision-maker through a Power of Attorney for Property. The lawyer explains that the Office of the Public Guardian and Trustee is there for people who are mentally incapable of dealing with their own finances and where there is no one else who can do so. The Public Guardian offers a full range of trustee services that include investments, legal work, tax filing and property management. The Public Guardian charges a fee for these services. In order for the Public Guardian to act on Jimmy's behalf, Jimmy would have to first be assessed by a physician or health practitioner who has been trained as an "assessor." If the assessor determines that Jimmy requires the Public Guardian to act on his/her behalf then they would assume control over Jimmy's finances.

Jimmy's parents note that there is some doubt about whether Jimmy meets the criteria for Public Guardian intervention. Jimmy has demonstrated capacity to make financial decisions for himself as he does his own banking, maintains a savings account for his annual summer holiday and makes all of his incidental purchases on his own. The lawyer explains that Jimmy's history of managing his own money may not be enough for an assessor to find him capable. The background and education of assessors is quite variable and two assessors may not agree on an assessment of capacity based on the same case.

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The lawyer goes on to explain that Jimmy will not likely be eligible for support from the Public Guardian in any event since there are other people actively supporting Jimmy. First there are Jimmy's parents who are getting older but still active in supporting Jimmy. Second, Jimmy's brother has been assuming greater support over the past year to alleviate some of the burden on Mom and Dad. Jimmy's brother has affirmed his commitment to assume full responsibility when the parents are no longer able to do so.

The lawyer describes the Power of Attorney for Property. It was established in the province of Ontario to provide a safeguard for the property of older adults and people with a developmental disability. It comes into play in the event that the individual is unable to make these decisions him/herself either through a serious illness or accident. There is a recommended process for establishing the Power of Attorney. The individual, his/her family and other support people:

1. Describe in detail how decisions are currently made.
2. Identify the important values and preferences of the individual pertaining to financial decisions.
3. Identify the details of what he wants a substitute decision-maker to do in the event that he can no longer make decisions.
4. Identify the substitute decision-maker and then create the Power of Attorney.

While Jimmy and the family can create the Power of Attorney themselves, the lawyer recommends that he assist them with final wording to ensure it is done correctly and that Jimmy's wishes are protected. The lawyer recommends that the Power of Attorney for Property be customized for Jimmy's particular circumstances. First, Jimmy should continue to exercise full authority over his own money while Power of Attorney is given to some one else for any decisions about the sale of the home. Second, the circumstances and time when the Power of Attorney would take effect for Jimmy's other financial decisions can be stipulated to provide protection in the event that Jimmy becomes unable to make them for himself.

More information about the Power of Attorney for Property is available in this Guide. See Section IV B. – Property: Power of Attorney for Property.

### The Public Guardian and Trustee Makes Decisions for Bill

When he was very young, Bill was moved to live in an Ontario government facility for people with a developmental disability. At that time, the physician at the facility became aware that Bill had no remaining family. The physician also deemed that Bill was incapable of making decisions for himself or of giving consent for health care decisions. Based on the assessment of Bill's ability and the absence of any relative who might support Bill with financial and health care decisions, the Public Guardian and Trustee was named his "Guardian of Property" and received authority to make health care decisions on Bill's behalf.



Many years later, Bill was moved from the facility to a group home operated by a community agency. The agency staff worked with Bill so he could learn about living in his new home and community. Bill learned to shop for groceries, do some basic house-cleaning and cook simple

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meals. He worked in a sheltered workshop for many years and eventually moved on to part-time supported employment with the local grocery store. During these years, Bill received a cheque from the Office of the Public Guardian and Trustee, which was automatically deposited to his bank account each month. The agency had arranged for this method of Bill receiving his money so he could learn about banking and budgeting. Whenever Bill needed to make a large purchase, such as a new bed or television, the group home staff would arrange to contact Bill's guardian for permission. The guardian approved the purchase of a bed and released funds for it. However, the group home staff could not convince the guardian about the television.

When Bill became ill and required an operation, the staff in the group home contacted the Office of the Public Guardian and Trustee to speak with Bill's appointed guardian about permission for the operation. This permission was obtained after the physician provided information to the guardian.

During Bill's convalescence from his operation, he became aware of supervised holidays that were available for people with disabilities. He had always wanted to go to Nashville so he talked with the group home staff about this. Bill began to save some of his wages from the part-time job and on the basis of advice from the group home staff, planned to get the rest of the money from his account with the Public Guardian. During the next few months, the group home staff contacted the guardian on Bill's behalf to arrange for the release of funds for his holiday. The guardian did not see a need for such an expense and after several attempts the staff gave up the pursuit. Bill was very disappointed when he learned of the guardian's final decision.

Bill, with the help of support staff, explored his options to challenge the decision of the Public Guardian. Bill discovered that in the case of a disagreement, the Public Guardian and Trustee is required to provide clients and their immediate family members with information about decisions, including a financial statement, if one is requested. Concerns can be brought to the attention of the Client Representative, who must attempt to resolve the issue. However, since it was the Client Representative who had made the decision not to allow Bill to have money for his vacation, Bill proceeded to the next step in the process: to contact the Area Manager and raise the issue with him. The resulting conversation resulted in a re-examination of the situation and Bill's request was eventually granted. During the process of challenging the original decision, Bill learned that if his approach to the Area Manager had been unsuccessful the court could be asked to review the actions of the OPGT under the *Substitute Decisions Act*. This process is called a "passing of accounts" and is the appropriate way to resolve concerns if they cannot be addressed informally.

More information about the Public Guardian and Trustee is available in this Guide. See Section IV C. – Guardianship: Office of the Public Guardian and Trustee.

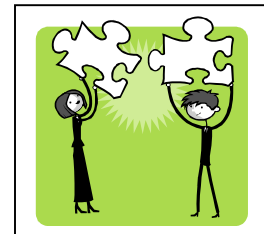
### Financial Abuse Results in Appointment of Public Guardian and Trustee

The sudden death of Jill's parents coupled with a lack of transition planning to older adulthood for her resulted in a crisis situation.

No other support options were available or in the planning stages so at the age of 39 Jill was moved to a long term care home.

Throughout all these changes Jill's older sister continued to provide support related to all of Jill's financial affairs. A few months later, Jill's placement in the long term care home became known to the local developmental services agency. A planning

process began to assess Jill's support needs and prepare her to move to a group home. After Jill's move, her sister continued to look after Jill's money. In the following weeks, the



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developmental services staff began to question some of the financial decisions being made by the sister. Discussions with Jill's sister failed to produce any clarification for the agency.

Over time it became clear that the sister was spending Jill's money on herself rather than providing for Jill's needs. The agency applied to the Public Guardian and Trustee for a trustee to handle Jill's finances. This was granted. Subsequently, the sister hired a lawyer to pursue the matter and have financial guardianship revert to herself. The agency then retained a lawyer to defend the client's rights and ensure the continuing role of the Public Guardian and Trustee on Jill's behalf.

#### **The Long Term Care Home Becomes Trustee for June's Financial Affairs**

June lived at home with her mother. June's sister was the substitute decision-maker for personal care and for property. However, June had very little contact with her sister and there had never been a reason for the substitute decision-making power to be used. June participated in programs offered by a local developmental services provider. When June's mother died, a plan was already in place to have her move to a long term care home. The developmental services provider asked the sister to provide permissions related to the move to a long term care home. The sister failed to respond despite repeated requests. It became clear over time that the sister was suffering with mental health problems. Subsequently, June's niece became involved and offered to help. However, the niece had no legal authority to act since the power resided with June's sister.

Through a series of meetings involving June, her sister and niece, the sister agreed to relinquish the role as substitute decision-maker. The long term care home became the trustee for June's finances. June's niece was appointed by June as her Power of Attorney for Personal Care.

#### **Henson Trust Established for Allison and Her Mother**

Allison, aged 51, lived at home with her elderly parents, Betty and Tom, both of whom were in their 80's. Allison had three siblings who were married and each lived a considerable distance away. Her mother, Betty had been showing signs of dementia for several months when her husband, Tom, arranged for her to visit a geriatrician. The tests identified that she had Alzheimer disease. During the progression of Betty's symptoms, Tom had been assuming more of the duties around the house and had been providing additional support to both his wife Betty and his daughter, Allison. The geriatrician advised Tom that his care-giving role would increase as Betty's symptoms became more pronounced. A few weeks later, Tom was diagnosed with terminal cancer.

When Tom's brother and sister learned of Tom's illness, they began to provide support to the family. They soon realized that Tom's plan of leaving his estate to Betty to provide for her needs and for Allison's, was no longer viable. They encouraged Tom to revise his will. Tom went to a lawyer who proposed a new plan with four elements:

1. Appointing a substitute decision-maker for Betty's personal care and for finances.
2. Removing Betty as the beneficiary to the will.
3. Establishing a Henson trust for both Betty and Allison.
4. Creating the trust so that upon Betty's death, the proceeds would be distributed to the other three children and \$300,000.00 would remain in the trust for the support of Allison during the remainder of her lifetime.

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#### Henson Trust Established for Bruce after Dad Dies

Bruce, aged 58, lived with his parents who were in their 90's. His father Bob died, leaving an estate to his wife Flora of \$1 Million plus the family home. Flora had never managed money other than the weekly grocery budget. She found the new responsibility difficult but endeavoured to fulfill it as best she could. Over time, Flora became less able to look after the home and relied more on Bruce for the house-keeping, cooking and driving to the store for groceries. Bruce enjoyed the responsibilities. After three years, both Bruce and his Mom found themselves more isolated from the social lives they had enjoyed before Bob's death.

A family cousin, Albrecht, also in his 90's visited Bruce and Flora on a regular basis to see how they were doing. He began to realize that Flora was becoming fragile and unable to get outside. Her health had deteriorated and she was struggling with some chronic health conditions. Flora relied completely on Bruce for all of the household tasks. Bruce no longer had time to see his own friends as most of his time was taken up with caring for his mother.

Albrecht suggested that Flora get a medical alert calling system in case she had a fall when Bruce was out. He also recommended getting Meals on Wheels in twice a week to provide some relief to Bruce. Bruce did not like these ideas. He said they would cost too much money and he could look after his mother without help. As time went by and the family's condition did not improve, the Albrecht recommended that Flora and Bruce move to a long term care home where they could still be together and receive the help then needed. Bruce refused to go but Flora thought it would be the best thing for herself.

Flora and Albrecht visited with the family lawyer to see what should be done about the family finances after Flora entered the long term care home. The lawyer recommended establishing a Henson trust to provide for Flora during her remaining years and for Bruce after her death. The arrangements included providing assistance with managing investments and personal support needs for Flora and Bruce.



#### **B. PROPERTY: POWER OF ATTORNEY FOR PROPERTY**

The *Substitute Decisions Act* sets out the legislative framework for granting continuing powers of attorney for property and guidelines for the persons acting as attorneys for property.

##### **What is the appropriate thing to do about aging and decisions about property?**

An individual may become unable to make decisions about his/her property and finances either through a serious illness or accident. All adults in Ontario are encouraged to make a continuing Power of Attorney for Property, appointing someone who can make certain financial decisions if required. The Power of Attorney provides a safeguard against decisions being made by others who do not know the person well.

##### **How is a Power of Attorney put in place?**

There is no single formula for choosing the substitute decision-maker. It must be done with due consideration for the needs of the individual and who can best ensure the individual's wishes are respected if he/she cannot make decisions about finances and property. There are also some legal requirements that limit who can become a substitute decision-maker.



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The process of giving authority to someone else for finance and property decisions is fairly straightforward:

1. List the person's assets and where they are located.
2. Review with the person, what is important to him/her (beliefs, values, preferences and wishes).
3. Identify the details of what the person wants a substitute decision-maker to do in the event that he/she can no longer make decisions.
4. Identify the substitute decision-maker(s).
5. Create the Power of Attorney.

The Continuing Power of Attorney for Property is signed and dated by the person appointing the attorney. Two witnesses must watch the person do this and then must co-sign the document in the presence of that person and in the presence of each other. The resulting legal document is known as a Power of Attorney for Property.

#### **Should a lawyer be used to set up a Power of Attorney?**

Since the Power of Attorney is a legal document and the appointment of substitute decision-maker(s) is a very significant event, it is recommended that a lawyer be consulted in all cases. The lawyer can provide help with final wording to ensure it is done correctly and that the person's wishes are fully protected.

#### **What if the older adult cannot name the substitute decision-maker?**

Where the person is not capable of making a POA for property, either the PGT becomes the statutory guardian and is later replaced by a family member or there is a court application to appoint a guardian of property.

#### **What can the substitute decision-maker for property do?**

A Continuing Power of Attorney for Property allows the substitute decision-maker(s) to make decisions concerning the person's assets including banking, signing cheques, buying or selling real estate and buying consumer goods.

The appointed attorney can do almost anything with the person's property that the person him/herself could do except make a Will and change beneficiary designations on life insurance policies, RRSPs and RRIFs.

The document may define limits on the attorney's power over certain property and transactions.

#### **Who can be an attorney for property?**

An Attorney named for property must be:

1. At least 18 years of age.
2. Mentally capable of fulfilling the attorney responsibilities.

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### For Older Adults with a Developmental Disability

#### When does the Power of Attorney for Property take effect?

The Continuing Power of Attorney for Property comes into effect when the person signs the Power of Attorney document or at such other time as the person indicates on the document.

#### Can more than one Substitute Decision-Maker be named?

Yes. If the person names more than one Attorney for Personal Care then they must also specify how the parties are to make decisions about personal care. There are three options available when there is more than one attorney.

1. Joint Decisions: substitute decision makers must make any decisions together or jointly. No one attorney can act alone.
2. Several Decisions: any one of the substitute decision-makers may make a decision on his/her own.
3. Joint and Several Decisions: substitute decision-makers can act alone or together depending on circumstances such as who is most readily available.

#### Where can I find more information on Power of Attorney for Property?

- **Community Legal Education Ontario (CLEO)** Tel: 416-408-4420 or on the web at [www.cleo.on.ca](http://www.cleo.on.ca) [click on publications; then click on health and disabilities; then click on Continuing Power of Attorney for Property].
- **Advocacy Centre for the Elderly (ACE)** Tel: 416-598-2656 or on the web at [www.advocacycentreelderly.org/](http://www.advocacycentreelderly.org/) [click on powers of attorney and related issues; at the bottom of the next page you can click on ACE publications for a selection of pdf documents on the subject of substitute decision-making].
- **Government of Ontario**  
[http://www.e-laws.gov.on.ca/browse\\_E.asp?lang=en](http://www.e-laws.gov.on.ca/browse_E.asp?lang=en)  
View and print the *Substitute Decisions Act* that governs Power of Attorney for Property.
- Speak to a lawyer.

## C. GUARDIANSHIP: OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE

#### What is the Public Guardian and Trustee?

While Ontario provides for citizens to make their own decisions and appoint substitute decision-makers, there is also provision for a Public Guardian and Trustee who can act on behalf of citizens who are mentally incapable of dealing with their own finances and where there is no one else who can do so.

#### How is the Public Guardian and Trustee appointed as guardian for property?

A physician or health care practitioner who has been trained as an “assessor” has the authority to determine whether a person requires a substitute decision-maker to act on his/her behalf. Where no attorney for property has been appointed, or the person appointed is unable to act, the Office of the Public Guardian and Trustee (OPGT) becomes the statutory guardian of property once an individual has been assessed as incapable of managing property and found in need of such assistance.

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### **For Older Adults with a Developmental Disability**

#### **Are fees charged by the Public Guardian and Trustee?**

The OPGT is required to charge fees for services provided to individuals whose property falls under its guardianship. Fees are based on the Regulations to the *Substitute Decisions Act* and are currently set at 3% of the assets in the hands of the OPGT plus 3% of disbursements and a care and management fee of 3/5ths of 1% of the average value of the assets. Legal work, tax filing and property management services are charged at a rate established by the OPGT.

#### **Is it possible to replace the appointment of the Public Guardian and Trustee?**

A relative of the person may apply to replace the PGT as the guardian of property. The PGT will consult with the individual and his/her caregivers upon such a request and require that the relative submit a management plan for the incapable person's property.

A relative of the person may request that they become the guardian. The Public Guardian will consult with the individual and his/her caregivers upon such a request and require that the relative have a reasonable plan to provide guardianship support.

#### **Can the appointment of the Public Guardian be appealed?**

An individual may contest the appointment of the Public Guardian and Trustee. A client representative, who is an employee of the Office of the Public Guardian and Trustee, can provide guidance on how to do this. The individual may use the services of a lawyer to appeal the appointment. The appeal is made to the Consent and Capacity Board. (See information about the Consent and Capacity Board elsewhere in this Guide).

#### **What services are offered by the Public Guardian and Trustee?**

The Office of the Public Guardian and Trustee (OPGT) offers the following services:

- Property Guardianship.
- Personal Care Guardianship.
- Decisions About Treatment and Admission to Long Term Care.
- Guardianship Investigations.
- Appointment of Private Guardians of Property.
- Acting as Litigation Guardian.
- Estates Administration.

#### **Where can I find more information about the Public Guardian and Trustee?**

The Office of the Public Guardian and Trustee offers information brochures on their web site:

- When the Office of the Public Guardian and Trustee Becomes Your Guardian of Property.
- Estates Administration.
- The Role of the OPGT in Guardianship Investigation.
- The Role of the OPGT in Providing Property Guardianship Services.
- Becoming a Guardian of Property.
- The Role of the OPGT in Making Substitute Health Care Decisions.
- Powers of Attorney and "Living Wills" Some Questions and Answers.

#### **Office of the Public Guardian and Trustee**

595 Bay St., Ste. 800; Toronto ON M5G 2M6

Toll-free: 1-800-366-0335      Phone: 416-314-2800

TTY: 416-314-2687      Fax: 416-314-2695

Web site: [www.attorneygeneral.jus.gov.on.ca/english/family/pgt/](http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/)

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## **V. INCOME AND TAXATION**

### **A. GOVERNMENT INCOME PROGRAMS**

Income levels change for most people when they reach older adulthood. Persons retiring from employment and receiving a pension experience a drop in income to about 65% of their pre-retirement level. Persons receiving a fixed income from a government support program will also experience change in income level as they become ineligible for one program and must move to others. For example, a person with a developmental disability who receives Ontario Disability Support Program Income (ODSP) will have to move to a mix of federal and provincial income support programs at the age of 65. It is important to consider all of the cash payments and benefits that are provided when one reaches 65 years of age. The benefits provided by ODSP are not the same as those that a person receives at age 65.

The majority of people with developmental disabilities in Ontario receive ODSP and are therefore living on a lower income than most of the rest of the population. Planning for the transition in income at age 65 is important to identify how the person will continue to manage.

#### **How much money should a person receiving ODSP expect at age 65?**

People receiving the maximum ODSP payment will experience an increase in income when they turn 65 and begin to receive income from federal and provincial income programs available to older adults. A comparison of amounts paid before and at age 65 is summarized in the table below. It is important to note that these amounts are provided to illustrate the comparison. Please be sure to check current information for your specific situation.

Table: Comparison of ODSP and Income Support for Persons Aged 65 and Older

<b>Maximum Payments For Single Person</b>	<b>Before Age 65</b>	<b>Age 65 and Older</b>			
Single Person	<b>ODSP</b>	OAS	GIS	GAINS	<b>Total</b>
Monthly	<b>\$999.00</b>	\$502.31	\$634.02	\$83.00	<b>\$1219.33</b>
Annual	<b>\$11,988.00</b>	\$6027.72	\$7608.24	\$996.00	<b>\$16,476.96</b>

Note 1: These amounts do not include other benefits such as the drug benefit under ODSP.

Note 2: These figures are for November 2007; amounts are subject to adjustment at intervals; check current information.



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## **For Older Adults with a Developmental Disability**

### **ONTARIO DISABILITY SUPPORT PROGRAM (ODSP)**

ODSP provides financial support, employment support and additional benefits.

Financial support is provided to help with basic needs and accommodation costs for eligible people with disabilities. Employment support is geared to helping people prepare for and make the transition to employment. Additional benefits are provided for health and other personal requirements.

#### **What are the eligibility criteria for income support under the ODSP?**

There are several disability and financial criteria to determine eligibility for income support under ODSP.

1. General criteria include:

- A verified physical, developmental or mental disability that is expected to last a year or more.
- A disability must make it difficult to care for oneself, participate in community life or to work.
- The person is financially eligible and has assets of less than \$5000.00
- 18 years of age or older.
- A resident of Ontario.

2. A person may also be eligible for ODSP if he/she qualifies financially and:

- Receives disability benefits under the Canada Pension Plan (CPP).
- Is 65 or older and not eligible for Old Age Security (OAS).
- Lives in a psychiatric facility; or
- Lives in a facility under the *Developmental Services Act* or in a home under the *Homes for Special Care Act*; or
- Is about to turn 18 and currently receives the Assistance for Children with Severe Disabilities Benefit (formerly called the Handicapped Children's Benefit).

3. Financial Eligibility Related to Assets

To be eligible financially to receive ODSP the individual may not own assets above a stipulated level and they do not receive gifts or other voluntary payments above a stipulated level over a 12 month period. These limits may change. Refer to current ODSP financial eligibility criteria available from the Ministry of Community and Social Services.

In determining the value of an applicant's net assets for the purposes of determining the individual's entitlement to support, certain items are excluded from the calculation including the value of the applicant's principal residence and the value of any interest the applicant holds in a trust derived from an inheritance or the proceeds of a life insurance policy provided the capital of the trust does not exceed \$100,000. In determining the level of an applicant's income, payments used to fund the purchase of approved disability related items and services are excluded from the calculation.

It is possible to set aside more than the \$100,000 limit currently prescribed under the ODSPA for a disabled family member. As long as the assets are settled in a Henson Trust, the disabled family member remains eligible to receive ODSP income support and extended health care benefits. The assets in the trust may be any amount and anything such as a house.

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#### What is the amount of financial assistance available under ODSP?

The amount of money received from the ODSP will vary depending upon rent costs and family size. The person may also be entitled to benefits such as drug and dental coverage, Community Start Up and Maintenance Benefits and Employment Start Up Benefits, or financial assistance for special diet requirements, special needs items as well as eyeglasses, hearing aids, etc. The table at the beginning of this section on Government Income Programs provides the maximum amount for an individual. ODSP rates are adjusted from time to time to reflect changes in the cost of living.

#### What is the Community Start Up and Maintenance Benefit?

The Community Start Up and Maintenance Benefit (CSUMB) is available to ODSP Income Support recipients who:

- Must move and/or are setting up a new permanent residence in the community;
- Need assistance to remain in their current residence; or
- Require payment for utility/heat arrears or reconnections.

#### Are there any additional benefits?

Some of the additional benefits include eyeglasses, hearing aids, special diet allowance, diabetic supplies, ostomy supplies, surgical supplies, transportation to attend medical appointments, wheelchair/mobility device repairs and batteries, guide dog allowance, back to school and winter clothing allowance for dependent children, community start-up benefit, employment start-up benefit, extended health benefits and emergency home repairs. These additional benefits do not continue once ODSP payments cease.

#### When does ODSP stop?

ODSP stops at age 65. ODSP recipients receive a letter from the ODSP office a few months before their 65<sup>th</sup> birthday informing them that ODSP payments will cease once they turn 65. The correspondence also advises the person to apply for income support benefits available to seniors in Ontario and Canada: Old Age Security (OAS), the Guaranteed Annual Income Supplement (GIS) and the Ontario Guaranteed Annual Income System (GAINS).

#### Where can I find more information on ODSP?

- **Ministry of Community and Social Services** provincial office at 1-888-789-4199.
- **Ministry of Community and Social Services** website at [www.cfcs.gov.on.ca](http://www.cfcs.gov.on.ca)
- **Advocacy Resource Centre for the Handicapped** (ODSP eligibility, appeals, etc.)  
[http://www.archlegalclinic.ca/publications/legislation/A73\\_1999\\_000709/03\\_assets.asp](http://www.archlegalclinic.ca/publications/legislation/A73_1999_000709/03_assets.asp)
- **ODSP Handbook - Government of Ontario** (program benefits and policy directives)  
[http://www.cfcs.gov.on.ca/CFCS/en/programs/IES/OntarioDisabilitySupportProgram/Publications/ODSP\\_handbook.htm](http://www.cfcs.gov.on.ca/CFCS/en/programs/IES/OntarioDisabilitySupportProgram/Publications/ODSP_handbook.htm)
- **ODSP Support Website** (rights, ODSP, links to other related web sites)  
[http://home.cogeco.ca/%7Emmdilts/odsp\\_tips.htm](http://home.cogeco.ca/%7Emmdilts/odsp_tips.htm)



# GUIDE TO PROPERTY AND PERSONAL CARE

## For Older Adults with a Developmental Disability

### **OLD AGE SECURITY (OAS)**

#### **What is Old Age Security?**

Old Age Security is a monthly payment that goes to most Canadians 65 years of age or older. Eligibility criteria for Old Age Security (OAS) require that a person:

- Is 65 years of age or older;
- Is a Canadian citizen or legal resident of Canada; and
- Has lived at least 10 years in Canada after reaching age 18.



#### **How much is the OAS payment?**

The amount of OAS paid to the individual will depend on how long they have resided in Canada. A full OAS pension may be paid to those who have lived here at least 40 years. Payments usually arrive sometime during the last three banking days of the month. An example of the maximum individual OAS payment paid in November 2007 appears in the table at the beginning of the section on Government Income Programs. Payments are adjusted at intervals. Check for current information.

#### **Where can I find more information on Old Age Security?**

- **Government of Canada** (Overview of the Old Age Security Program)  
<http://www.sdc.gc.ca/en/isp/oas/oasoverview.shtml>
- **Government of Canada** (Old Age Security Payment Rates)  
<http://www.hrsdc.gc.ca/en/isp/oas/oasrates.shtml>
- **Government of Canada** (Information Booklets on Old Age Security)  
<http://www.hrsdc.gc.ca/en/gateways/topics/ozs-gxr.shtml>

Application for Old Age Security can be made by picking up an application from any Human Resources Development Canada office or downloading it from their Internet site at [www.hrdc-drhc.gc.ca/isp](http://www.hrdc-drhc.gc.ca/isp)

### **GUARANTEED ANNUAL INCOME SUPPLEMENT (GIS)**

#### **What is the Guaranteed Annual Income Supplement?**

The Guaranteed Income Supplement (GIS) provides additional money on top of the Old Age Security pension for seniors on a low or modest income.

#### **Who is eligible to receive the GIS?**

To qualify for the GIS, the individual must be entitled to Old Age Security. Eligibility also depends on whether the individual's income and that of the individual's spouse or common-law partner, if they have one, exceeds a specific amount.

The supplement is based on the person's previous year's income or the combined income of the person and their spouse/common-law partner. Consequently, the recipient must renew the supplement each year.

The GIS payment is added to the OAS payment each month.

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### **For Older Adults with a Developmental Disability**

#### **Where can I find more information on the Guaranteed Income Supplement?**

- **Human Resources Development Canada**  
Telephone 1-800-277-9914 or on the web at [www.hrdc-drhc.gc.ca/isp](http://www.hrdc-drhc.gc.ca/isp)
- **Government of Canada** (OAS and GIS rates)  
<http://www.sdc.gc.ca/asp/gateway.asp?hr=/en/isp/oas/oasrates.shtml&hs=rzp>
- **Service Canada** (Guaranteed Income Supplement Page)  
<http://www1.servicecanada.gc.ca/en/isp/pub/oas/gismain.shtml#c>

#### **GUARANTEED ANNUAL INCOME SYSTEM (GAINS)**

The Province of Ontario provides money to seniors who get the federal Old Age Security (OAS) and the Guaranteed Income Supplement (GIS) so that they do not fall below the provincial guaranteed income level. It is not necessary to apply for GAINS.

The GAINS payment is based on an individual's income or combined income as a married couple or common-law partnership, which is reported on the GIS application, filed with Human Resources Development Canada (HRDC) or which is reported on the income tax and benefit form filed with the Canada Revenue Agency (CRA).

The specific amount of GAINS benefit is directly linked to the amount of the GIS monthly payments. GAINS payments range from a minimum of \$2.50 to a maximum of \$83.00 per month. Cheques are mailed automatically around the 25th day of each month. Direct deposit to one's bank account is also available.

#### **Where can I find more information on the Guaranteed Annual Income System?**

- **Government of Ontario – Ministry of Revenue**  
<http://www.rev.gov.on.ca/english/bulletins/itrp/6490.html>

#### **CANADA PENSION PLAN (CPP)**

The Canada Pension Plan (CPP) is provided to persons who have paid into the fund, usually through deductions from employment income. Eligibility criteria for CPP benefits include:

- A person has made at least one valid contribution to CPP, and
- Has reached their 60<sup>th</sup> birthday and has wholly or substantially ceased pensionable employment, or
- Has reached their 65<sup>th</sup> birthday (persons aged 65 do not have to stop working to receive their CPP pension).

There are important considerations to taking the CPP early, at age 60. First, the CPP benefit payable at age 60 is 30% less than what is paid at age 65, however, the person will receive the benefit for a longer period of time. Secondly, it is necessary for a person to cease employment in order to apply for CPP at age 60. It is best for each individual to review his/her personal financial situation with an advisor to determine whether taking the CPP early is to his/her benefit.

#### **Where can I find more information about the Canada Pension Plan?**

- Government of Canada - Human Resources and Social Development – Income Security Programs by telephone 1-800-277-9914 or the website at [www.hrdc-drhc.gc.ca/isp](http://www.hrdc-drhc.gc.ca/isp)
- You can request a copy of your CPP contributions online at <http://www1.servicecanada.gc.ca/en/isp/common/proceed/socinfo.shtml>



# **GUIDE TO PROPERTY AND PERSONAL CARE**

## **For Older Adults with a Developmental Disability**

### **CANADA PENSION PLAN DISABILITY BENEFIT**

#### **What is the Canada Pension Plan Disability Benefit?**

The Canada Pension Plan (CPP) disability benefit is available to people who have made enough contributions to the CPP and whose disability prevents them from working at any job on a regular basis. The disability must be long lasting or likely to result in death. People who qualify for disability benefits from other programs may not qualify for the CPP disability benefit. The CPP disability benefit is administered by Social Development Canada (SDC), a federal government department.

#### **How does an individual apply for the CPP Disability Benefit?**

The person must apply for the disability benefit in writing. There are also benefits available to the children of a person who receives a CPP disability benefit. Application forms are available by calling toll free 1-800-277-9914 or 1-877-454-4051.

It may take as long as three months to process an application for a disability benefit. This time frame is much shorter for terminally ill applicants.

#### **Can the CPP Disability Benefit be denied?**

Yes, a benefit may be denied for a number of reasons:

- Insufficient CPP contributions;
- A disability that does not meet the "severe" and "prolonged" criteria;
- A disability that began after the applicant's 65th birthday;
- A disability that began after the starting date of a retirement pension; or
- An application that was completed by the estate following a contributor's death.

If the benefit is denied, the applicant will be sent a letter explaining why the application was denied and providing information about the appeal process.

#### **Can an appeal be made if the CPP disability is not granted?**

You have the right to request a review of the decision. There are three opportunities or steps to request a review of the disability application. You must start with step 1 and proceed through the steps as necessary. Appeals must be done in writing:

Step 1 - A request to Social Development Canada (SDC) for reconsideration.

Step 2 - An appeal to the Office of the Commissioner of Review Tribunals.

Step 3 – An appeal to the Pension Appeal Board.

More information on the appeal process: <http://www1.servicecanada.gc.ca/en/isp/cpp/review.shtml>

#### **How does an individual ensure the CPP Disability Benefit is maintained?**

The CPP Pension Benefit Recipient must contact Service Development Canada to keep them informed of certain events such as a change of name, address or earnings in excess of the annual limit. The annual limit changes each year and was \$4,200 in 2006.

#### **Where can I find more information about the CPP Disability Benefit?**

- **Service Canada** (Guide to Canada Pension Plan Benefits)  
<http://www1.servicecanada.gc.ca/en/isp/pub/cpp/disability/guide/sectiond.shtml>

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**B. CONTINUITY OF INCOME AND SUPPORT**

**REGISTERED DISABILITY SAVINGS PLAN (RDSP)**

**What is a Registered Disability Savings Plan?**

The registered disability savings plan was proposed in the 2007 federal budget and will come into effect in 2008. The RDSP is modelled on the Registered Education Savings Plan (RESP) and is proposed to have these features:

- Will be available only to those families whose child qualifies for the disability tax credit or disability amount in the *Income Tax Act*. (Information about the Disability Tax Credit can be found in this Guide: See Chapter V - Income and Taxation, Section C – Taxation, item i - Disability Tax Credit.)
- To qualify, the Canada Revenue Agency (CRA) must confirm that a child fits the criteria for being 'markedly restricted' in the activities of daily living, in one or more ways.
- Will allow contributions to the RDSP by family and friends of a person with marked disabilities.
- Contributions will not be tax deductible.
- Contributions will yield both modest and major matching contributions by the federal government.
- There will be a lifetime limit of \$200,000.00 on RDSP contributions.
- Capital contributions withdrawn from the RDSP will not be taxed since the tax has already been paid by the contributor.
- Accumulated investment income will be taxable in the hands of the beneficiary as it is withdrawn.
- There will be limitations on how much can be withdrawn in a single year.
- RDSP payments must begin by the end of the year in which the disabled person turns 60.

**Does the federal Government make contributions to the RDSP?**

The federal government will make contributions to the RDSP on top of the contributions by family and friends in one of two ways, depending on family income:

1. Canada Disability Savings Grant (CDSG)

The CDSG will be paid as long as contributions are made until the end of the year in which the beneficiary turns 49 years of age. There will be a lifetime maximum of \$70,000.00 on the CDSG.

2. Canada Disability Bond (CDB)

The Disability Bond, paid by the federal government, will be available to very low income families. A CDB of up to \$1000.00 per year will be paid to low income families whose annual income is below \$20,833.00 in 2008. The value of the CDB will be reduced as family income increases to an upper limit of \$37,178.00. These family income thresholds will be indexed in subsequent years. There is a lifetime limit of \$20,000.00 on the CDB.

**Are there limitations on withdrawals?**

Yes, there is an annual withdrawal limit that may vary based on the recipient's life expectancy and the fair market of the RDSP. The annual limitation hinders use of the funds for large purchases such as an accessible van or home.

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### **For Older Adults with a Developmental Disability**

#### **Does the RDSP affect payment amounts from federal income tested benefits?**

Amounts withdrawn from the RDSP will not:

- Be considered in calculating income-tested benefits such as the Canada Child Tax Benefit and the Goods and Services Tax Credit.
- Reduce Old Age Security (OAS) or Employment Insurance benefits.

#### **Does the RDSP affect payment amounts from provincial income-tested benefits?**

The details of the RDSP pertaining to provincial benefits are not yet known.

#### **Where can I find more information about the RDSP?**

- **Canada Revenue Agency** (Registered Disability Savings Plan)  
<http://www.cra-arc.gc.ca/agency/budget/2007/rdsp-e.html>

### **REGISTERED EDUCATION SAVINGS PLANS (RESPS)**

#### **What is the Registered Education Savings Plan?**

A Registered Education Savings Plan (RESP) provides a method of saving for post secondary learning experiences by allowing the contributor to earn investment income in a tax deferred environment.

#### **Does the federal government make contributions to the RESP?**

The RESP allows the contributor to apply for the Canada Learning Bond and/or the Canada Education Savings Grant on his/her child's behalf.

##### The Canada Learning Bond (CLB):

A grant to help modest-income families meet education costs for children born after December 31 2003. A CLB is paid directly into the RESP of a child who is a named beneficiary and whose parent or guardian is eligible to receive the National Child Benefit Supplement (NCBS). The CLB is \$500.00 and the RESP may receive an additional \$100.00 per year for up to 15 years as long as the family continues to receive the NCSB. It is not necessary to make any contributions to the RESP in order to receive the CLB. More information about the CLB is available in the federal government booklet online at: <http://www.hrsdc.gc.ca/en/hip/lld/cesg/publicsection/files/CLB-E-brochure.pdf>

##### The Canada Education Savings Grant (CESG):

A grant payable to all families varies with family income. The amounts payable depending on income are summarised in Table 2 on the next page. There is a lifetime limit on the CESG of \$7200.00

#### **Are there different types of RESPs?**

There are two types of plan. Individual plans can be set up for the benefit of an individual beneficiary. Family plans can be set up to accept contributions for more than one beneficiary.

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#### Who can contribute to an RESP?

Parents, grandparents, relatives or friends may contribute to an RESP in respect of a particular beneficiary.

Table 2: Canada Education Savings Grants Payable

FAMILY ANNUAL NET INCOME	CESG PAYMENT FOR EACH DOLLAR CONTRIBUTED	ANNUAL CESG LIMIT	ANNUAL CONTRIBUTIONS TO RESP REQUIRED
Above \$74,000.	20 cents	\$500.00	YES
\$37,000. - \$74,000.	30 cents		
Below \$37,000.	40 cents		
Any Family Income Level	If you save over \$500.00 the CESG will provide the RESP with 20 cents for every extra dollar up to \$2000.00.		

More information about the CESG is available in the government booklet available at: <http://www.hrsdc.gc.ca/en/hip/lld/cesg/publicsection/files/CESG-E-brochure.pdf>

#### How much can be contributed to an RESP and over what period of time?

An individual can contribute any amount in a year up to a maximum lifetime limit of \$50,000.00 per beneficiary. Any child can be the beneficiary. For an individual plan, contributions can be made up to and including the 22nd year of the plan's existence. In the case of a family plan, contributions must stop in the year of the beneficiary's 21st birthday.

#### What exactly are the funds in the RESP and how are they paid?

The funds in the RESP consist of your contributions, the CESG and/or the CLB and interest earned on all funds in the plan. These funds provide for an Education Assistance Payment (EAP) to the beneficiary.

The total of all EAPs that can be made to a beneficiary before he or she completes 13 consecutive weeks in a qualifying educational program is limited to \$5,000. Once this period is completed, the beneficiary can receive any amount of EAP. A student requiring more than a \$5,000 EAP may apply to HRDC for permission to receive a larger EAP. The institution where the RESP has been set up (the promoter) may impose other restrictions within their plans with respect to EAPs.

#### Which expenses are covered by the RESP?

The beneficiary can use the Educational Assistance Payments (EAP) paid from the RESP to help finance his/her post-secondary education. The proceeds from the RESP may be applied to tuition, residence and other educational expenses. However, if an individual with a disability is attending school and receiving provincial disability benefits, then it is important that the RESP funds are used strictly for education-related costs (i.e. tuition, books, tutors, etc.). If RESP funds are used for items that are covered by provincial disability benefits such as shelter, food or clothing, then it would be deemed that the provincial disability benefits for these things are not required by the individual.

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#### **Are there tax deductions allowed with an RESP?**

Contributions made to an RESP are not tax deductible and are not taxed when returned to the subscriber. The grant received from the RESP, the EAP, is taxed in the hands of the beneficiary. Since students typically have little other income, they pay little or no tax on EAPs.

#### **How do I open an RESP?**

RESPs can be opened with a registered RESP Promoter. While all RESPs must meet certain requirements of the federal government, there are differences in how promoters administer RESPs and in the fees that they charge. Consider the details of the plan you are being offered before you decide. Human Resources and Social Development Canada maintains a list of Canada Education Savings Grant (CESG) Program promoters on the web site at:

[http://www.sdc.gc.ca/en/hip/lld/cesg/publicsection/how\\_do\\_i\\_find\\_an\\_RESP\\_promoter.shtml](http://www.sdc.gc.ca/en/hip/lld/cesg/publicsection/how_do_i_find_an_RESP_promoter.shtml)

#### **What if the child doesn't proceed to post secondary education?**

There are several options available:

1. Parents can arrange for the capital contributions to be returned tax free since tax was already paid on the money before it was contributed to the RESP.
2. Up to \$50,000 of the income that accumulates in the RESP can be transferred into their RRSPs to the extent that they have unused RRSP contribution room available.
3. Parents can receive an Accumulated Income Payment (AIP). In other words they can withdraw the income and pay tax at their marginal rate plus an additional 20% to offset the interest earned on the CESG. The CESG itself is returned to the federal government.
4. The money can be left in the plan for a few years in case the beneficiary changes his or her mind, and if the plan allows this.
5. The contributor may name a new beneficiary related by blood or adoption and who is under 21 years of age.

#### **What types of studies or training are eligible under the RESP?**

The education facility must:

- Be a designated educational institution with a qualifying educational program.
- Qualify under the Canada Students Loan Program or be certified by the Minister of Human Resources as an educational institution providing courses that will develop or improve skills in an occupation or vocation.

The qualifying education program must be no less than:

- Three consecutive weeks long.
- Ten hours per week for full-time students.
- Twelve hours per month for part-time students.

In addition to existing educational programs, it is possible for a group of families to request that some type of appropriate educational or training programs be developed and taught by colleges and universities to meet the needs of people with a developmental disability. Such programs can

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also benefit the educational facility by providing opportunity for instructors to learn more about teaching people with a disability.

Most educational facilities offer support services for students with disabilities. Such supports may include things such as providing for a computer with Internet access, student note takers, a letter to each instructor explaining the person's disability, hands on demonstrations and a quiet study area.

#### Where can I find more information about Registered Education Savings Plans?

- **Human Resources and Social Development Canada** (Canada Education Savings Grant)  
[http://www.sdc.gc.ca/en/gateways/nav/top\\_nav/program/cesg.shtml](http://www.sdc.gc.ca/en/gateways/nav/top_nav/program/cesg.shtml)
- **Human Resources and Social Development Canada** (the Canada Learning Bond)  
[http://www.sdc.gc.ca/asp/gateway.asp?hr=en/hip/lld/cesg/publicsection/CESP/Canada\\_Learning\\_Bond\\_General.shtml&hs=cgs](http://www.sdc.gc.ca/asp/gateway.asp?hr=en/hip/lld/cesg/publicsection/CESP/Canada_Learning_Bond_General.shtml&hs=cgs)
- **Human Resources and Social Development Canada** (Finding an RESP Promoter)  
[http://www.sdc.gc.ca/en/hip/lld/cesg/publicsection/how\\_do\\_I\\_find\\_an\\_RESP\\_promoter.shtml](http://www.sdc.gc.ca/en/hip/lld/cesg/publicsection/how_do_I_find_an_RESP_promoter.shtml)
- **Human Resources and Social Development Canada** (Glossary of Terms)  
<http://www.sdc.gc.ca/en/hip/lld/cesg/publicsection/glossary.shtml>

## **HENSON TRUSTS**

#### What is a Henson Trust?

A Henson Trust is an absolute discretionary trust used where a beneficiary is the recipient of Ontario Disability Support Program benefits (ODSP). In a Henson Trust, the trustee and not the beneficiary must be the one who decides the amount of the funds or property the beneficiary receives and when he or she receives it.

#### How did the Henson Trust come into being?

In the 1980's, Leonard Henson left his estate in trust for his daughter who was receiving Ontario disability support payments. After his death the province stopped benefits provided under the *Family Benefits Act* to the daughter on the grounds that the absolute discretionary trust was a liquid asset.

This decision was overturned by the Social Assistance Review Board, the Divisional Court and the Court of Appeal, which all held that "liquid assets" did not include a discretionary trust in which the beneficiary had no right to demand payment of the income or capital, and in which the trustees had an unfettered discretion. The Ontario government accepted the decision and has not challenged it. Consequently, recipients of ODSP continue to receive the income and health benefits where an absolute discretionary trust has been established for them.

#### Who may be a trustee?

A trustee may be one or more siblings, close family members, trusted advisors or trust companies. It is best that the trustee be someone who is not entitled to receive any or all of the trust property, whether during the lifetime or upon the death of the disabled person. This avoids possible conflict of interest that could interfere with the intent and implementation of the trust. A corporate trustee such as a trust company, may be preferred where there are no close relatives able or willing to act or where the trust is likely to be administered over a lengthy period of time.

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#### **What does the trustee do?**

The trustee for a Henson Trust has absolute discretion. This means the trustee retains absolute discretion to decide when and how much will be paid to the disabled family member. The disabled family member's interest in the trust does not vest. Consequently, it is important to choose the trustee wisely.

#### **When and how are payments made to the disabled person?**

In a typical Henson Trust, the trustees make distributions to the disabled family member for a specified period of time, usually the lifetime of the disabled family member. At the end of the specified period, the assets held in the trust are distributed to one or more persons or organizations identified by the person who "settled" the trust (the settlor) or the trustees.

#### **When can a Henson Trust be set up?**

A person may establish a Henson Trust during his/her lifetime (called an inter vivos Henson Trust) or pursuant to a will (a testamentary Henson Trust). A Henson Trust set up while one is still alive is referred to as an inter vivos Henson trust.

#### **What money can be put into a Henson fund?**

Funds for the inter vivos Henson Trust may come from the person's own available assets. Funds for a testamentary Henson trust may come from the estate as provided in a will or through rolling over an RRSP or RRIF into a Henson trust. This rolling over provision allows that none of the money in the RRSP or RRIF will be taxable.

Some pension funds such as the Ontario Municipal Employees Retirement System (OMERS), Ontario Teachers Pension Plan and the Ontario Power Generation Pension Plan allow for a "dependent survivor" pension, which could include a dependent adult child receiving Ontario disability benefits. This may have a negative effect on the surviving child's benefits but the pension may be large enough (i.e. \$3000.00 per month) such that it doesn't matter.

#### **What are the benefits of a Henson Trust?**

1. The Henson Trust ensures that the disabled family member is provided for financially, even in the event of the subsequent incapacity of the person who established the trust.
2. The parent setting up an inter vivos trust can realize an overall saving of income tax; any income earned by the trust could be taxed at the marginal tax rate of the disabled family member rather than at the highest marginal rate which is applicable to inter vivos trusts provided that the trustees filed the necessary elections with Revenue Canada, that the settlor of the trust cannot exert positive or negative control over the administration of the trust, and that the settlor is not entitled to any of the trust property.
3. Avoid the payment of estate administration taxes (often referred to as probate fees) payable on the property settled in the trust by the parent.

#### **Does the Ontario Disability Support Program (ODSP) have anything to say about Henson Trusts and estate planning?**

It is very important that the Henson Trust be set up correctly to ensure the person with a developmental disability can continue to receive ODSP benefits. Speak with a lawyer who is

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knowledgeable about Henson Trusts. Not all lawyers have experience with the Henson Trust since it was established in the late 1980's.

The policy directives for ODSP are available from the Ontario Ministry of Community and Social Services web site at:  
<http://www.cfcs.gov.on.ca/CFCS/en/programs/IES/OntarioDisabilitySupportProgram/Publications/odspisdir.htm>

The following policy directives should be considered when estate planning:

- 4.1 - Definition and Treatment of Assets.
- 4.4 - Transfer of Assets, Inadequate Consideration.
- 4.7 - Funds Held in Trust.
- 4.8 - Life Insurance Policies.
- 5.1 - Definition and Treatment of Income.
- 5.8 - Gifts and Voluntary Payments.
- 5.9 - Disability Related Items and Services.

#### **Are there other directives or regulations to consider when establishing a Henson Trust?**

While the ODSP regulations appear to be the official word when estate planning, it is important to consult a lawyer who specializes in Henson Trusts. The individual's situation and proper interpretation of government regulations are key to establishing an effective Henson Trust.

#### **Where can I find more information about Henson trusts?**

There are many sources of information available on the Internet. Type "Henson Trusts" into your web browser.

If you decide to establish a Henson trust or require expert information on your situation, speak to a lawyer who is knowledgeable about Henson Trusts. Be sure the trust has all the required features of a Henson Trust.

## **REGISTERED RETIREMENT SAVINGS PLANS (RRSPs) AND REGISTERED RETIREMENT INCOME FUNDS (RRIFs)**

### **What is a Registered Retirement Savings Plan and what is a Registered Retirement Income Fund?**

The Registered Retirement Savings Plan is a financial vehicle that allows a person to save for his/her retirement or for the retirement of his/her spouse or common law partner. The RRSP must be converted into a Registered Retirement Income Fund at the end of the year that the person turns 69. The RRIF must pay out a certain amount each year to the person. The person setting up the RRSP or RRIF may name a beneficiary in the event of death.

### **What if the person dies before the RRSP is cashed in?**

The person setting up the RRSP is required to name a qualified beneficiary in the event of death before the plan is cashed. The qualified beneficiary may include:

- The deceased annuitant's spouse or common-law partner.
- A financially dependent child or grandchild of the deceased annuitant.



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#### **Are there implications for taxes and disability benefits if a child with a disability inherits the proceeds of an RRSP?**

Yes. A large capital gain or other increase in income could result in the loss of ODSP or OAS and GIS benefits, as well as a large tax bill owing to Canada Customs and Revenue. Tax arrears can be collected as direct deductions from almost any source of income, including private pensions. Even real estate can be subject to collection procedures by Canada Customs and Revenue.

Where the person has named his or her spouse or partner or financially-dependent child or grandchild as the beneficiary, that beneficiary can receive the RRSP or RRIF on a tax-deferred basis. Where the surviving spouse is the beneficiary, the funds may be transferred to his or her RRSP or RRIF, thereby deferring the tax until the surviving spouse withdraws the funds from a RRIF. Where the financially-dependent child or grandchild is dependent because of a disability, a similar tax deferral is available. The RRSP or RRIF funds may be transferred to an annuity for the child to age 18. Tax is payable on the annuity payments as they are received. The annuity payments may be made to a trust for the child. In the case of a surviving financially dependent child or grandchild who is the beneficiary of a Trust, the RRSP or RRIF proceeds may be transferred into the Trust. However, where the beneficiary is receiving ODSP, there is an additional consideration.

The *Ontario Disability Support Program Act* and related regulations limit the value of assets that an ODSP recipient may own and the income he or she may receive from sources other than from the ODSP. An ODSP recipient is permitted to have a beneficial interest in a trust where the capital of the trust was derived from an inheritance or proceeds of life insurance provided that the capital of the trust does not exceed \$100,000. For ODSP recipients to be able to take advantage of the RRSP/RRIF rollover the value of the benefits received must remain under the \$100,000 threshold.

Families with disabled children will often establish a Henson Trust for such children. The value of a properly established Henson trust will not be included in the calculation of the ODSP recipient's assets for purposes of the ODSP asset test.

#### **How do I set up an RRSP or a RRIF?**

An individual may set up a RRSP or RRIF through a financial institution such as a bank, Caisse Populaire or credit union. The financial institution can advise on the types of RRSPs and the investments they can contain.

#### **Where can I find more information on RRSPs?**

- **The Canada Revenue Agency**  
<http://www.cra-arc.gc.ca/tax/individuals/topics/rrsp/menu-e.html>
- **Wikipedia Website**  
[http://en.wikipedia.org/wiki/Registered\\_Retirement\\_Savings\\_Plan](http://en.wikipedia.org/wiki/Registered_Retirement_Savings_Plan)
- Speak to someone at your bank or credit union or seek the services of a reputable financial advisor.

#### **What is a spousal or common-law partner RRSP?**

This type of plan can help ensure that retirement income is more evenly split between the two members of the couple. The benefit is greatest if a higher-income spouse or common-law partner contributes to an RRSP for a lower-income spouse or common-law partner. The contributor

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### **For Older Adults with a Developmental Disability**

receives the short term benefit of the tax deduction for the contributions, while the annuitant, who is likely to be in a lower tax bracket during retirement, receives the income and reports it on his or her tax return.

A spousal or common-law partner RRSP is one:

- To which the annuitant's spouse or common-law partner contributes;
- That receives payments or transfers of property from RRSPs to which the annuitant's spouse or common-law partner has contributed; or
- That receives payments or transfers of property from RRIFs to which the annuitant has transferred amounts from other spousal or common-law partner RRSPs.

## **C. TAXATION**

There are a number of tax credits that apply to people with disabilities and to caregivers. The information provided here is based on the most recent information available at the time of publication. However, taxation rules may change with successive government budgets and with new interpretation of regulations. The reader should refer to the newest information available at the time of preparing their tax return and may wish to consult a tax specialist to ensure any claims are completed and submitted based on full information.

### **DISABILITY TAX CREDIT**

#### **What is the Disability Tax Credit?**

The Disability Tax Credit (DTC) is a non-refundable tax credit which can reduce the amount of tax that a person with a disability has to pay. If the DTC is not required by the person with a disability to reduce their taxable income to zero, then it may be possible to transfer it in whole or in part to an eligible family member including a parent or spouse subject to some limitations. It is best to talk to a tax specialist to determine eligibility for transfer of the DTC. The family member, among other things, may have supplied some or all of the basic necessities of life such as food, shelter and clothing to the person.

If the person with the disability is under age 18 then there is also a Disability Tax Credit Supplement that is added to the disability amount. If a parent has a dependent child who meets the eligibility requirements for the DTC, the parent may transfer and claim the unused portion of the child's DTC and the Disability Tax Credit Supplement.

Details of the Disability Amount can be found on Canada Revenue Agency's web site at:

[www.cra-arc.gc.ca/tax/individuals/topics/income-tax/return/completing/deductions/lines300-350/316/menu-e.html](http://www.cra-arc.gc.ca/tax/individuals/topics/income-tax/return/completing/deductions/lines300-350/316/menu-e.html)

[www.cra.gc.ca/benefits](http://www.cra.gc.ca/benefits) or see pamphlet T4114, Your Canada Child Tax Benefit.

#### **Who is eligible for the Disability Tax Credit?**

The Canada Revenue Agency (CRA) manages eligibility for the Disability Tax Credit (DTC). A person may be eligible for the disability amount if a qualified practitioner certifies on Form T2201 Disability Tax Credit Certificate, that the person has a prolonged impairment, and that the effects of the impairment are such that one of the following applies to the person:

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- Blindness even with the use of corrective lenses or medication.
- A marked restriction in any one of the following basic activities of daily living: speaking; hearing; walking; elimination (bowel or bladder functions); feeding; dressing; or performing the mental functions necessary for everyday life.
- The person needs and must dedicate a certain amount of time specifically for life-sustaining therapy to support a vital function.
- For 2005 and later years the individual does not need to quite meet the criteria for blindness or marked restriction, but the following conditions apply:
  - a. Because of the impairment, the person is significantly restricted in two or more basic activities of daily living, or significantly restricted in vision and at least one of the basic activities of daily living, even with appropriate therapy, medication, and devices;
  - b. These significant restrictions exist together, all or substantially all the time; and
  - c. The cumulative effect of these significant restrictions is equivalent to being markedly restricted in a single basic activity of daily living.

#### **What is the application process for the DTC?**

- Application may be made at any time during the year.
- Obtain a copy of the Disability Tax Credit Certificate (Form T2201).
- Complete the self-assessment portion of the form (Part A) to determine potential for eligibility.
- Have a physician or other qualified practitioner make a determination of eligibility by completing the form (Part B) and certifying their findings.
- Have a tax lawyer determine the transferability and eligibility for the DTC and DTC supplement to be claimed by a blood relative or their spouse.

The Disability Tax Credit Certificate (Form T2201) is available online at:

<http://www.cra-arc.gc.ca/E/pbg/tf/t2201/t2201-05e.pdf>

#### **Is it possible to claim the Disability Tax Credit for previous years?**

The Disability Amount is available to people based on the date of onset of the impairment. It is estimated that about 50% of people who are entitled to the Disability Tax Credit and the Caregiver Tax Credit are not actually claiming it.

An individual may file a claim for the disability amount for a previous year and up to ten previous years for which they may have been eligible but did not make the claim, by including with the completed form T2201, either:

- A completed Form T1ADJ, T1 Adjustment Request; or
- A letter containing details of the request.

#### **Who has to pay for fees charged by the physician or qualified practitioner?**

The applicant for a disability tax credit is responsible to pay any fees charged by the physician or Qualified Practitioner in completing the eligibility form. The applicant may be able to claim these fees as medical expenses on his/her tax return.

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#### What if the claim is denied?

The Canada Revenue Agency (CRA) will provide the applicant with a letter explaining why the application was denied. The applicant should check the reason given against the information he/she submitted since the decision by CRA is based on information provided by the qualified practitioner.

If the applicant has additional information from a qualified practitioner that was not included in the first review, that additional information should be sent to the Tax Credit Unit at the person's tax centre with a request for a second review.

#### Is it possible to appeal a denial of application?

The applicant has the right to file a formal objection to appeal the decision to deny the tax credit. The objection must be based on a Notice of Assessment or Notice of Reassessment received from CRA.

Objections must be filed within time limits as follows:

- One year after the deadline for filing the income tax return for the year in question; or
- 90 days after the date on the Notice of Assessment or Notice of Reassessment for that year.

Asking the tax centre to review a file for a second time does not extend the time limit for filing an objection.

An objection must be filed by either:

- Using form T400A – Objection *Income Tax Act*; or
- Sending a letter to the Chief of Appeals; or
- Completing the online form.

More complete information on appeal information is available on the Disability Tax Credit Certificate Form available online:

<http://www.cra-arc.gc.ca/E/pbg/tf/t2201/README.html>

The Disability Tax Credit Form can be obtained from any local Tax Services Office or at the Canada Revenue Agency web site:

<http://www.cra-arc.gc.ca/E/pbg/tf/t2201/README.html>

#### Where can I find more information on the Disability Tax Credit?

For more information and to obtain a copy of the General Income Tax and Benefit Guide and the Information Concerning People with Disabilities Guide, contact your local Tax Services Office or visit the Revenue Canada website at:

[http://www.cra-arc.gc.ca/E/pub/tg/rc4064/rc4064-e.html#P123\\_6617](http://www.cra-arc.gc.ca/E/pub/tg/rc4064/rc4064-e.html#P123_6617)



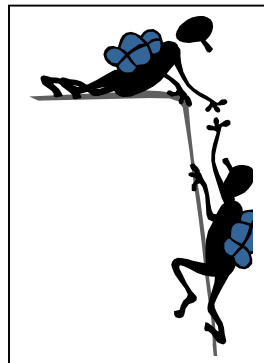
## GUIDE TO PROPERTY AND PERSONAL CARE For Older Adults with a Developmental Disability

### **DISABILITY SUPPORTS DEDUCTION**

An individual with an impairment in physical or mental functions may be able to deduct certain disability supports expenses incurred in the year to work, go to school, or do research. The Disability Supports Deduction can be claimed using CRA Form T929.

Disability support expenses include:

**Bliss symbol boards or similar devices** – must be used by an individual who has a speech impairment to help the individual communicate by motioning at the symbols or spelling out words. The need for this device must be **prescribed** by a medical practitioner. You can only claim this expense for 2005 and later years.



**Braille note-taker** – must be used by an individual who is blind to allow that individual to take notes (that can be read back to them or printed or displayed in braille) with the help of a keyboard. The need for this device must be **prescribed** by a medical practitioner. You can only claim this expense for 2005 and later years.

**Braille printer or large-print on-screen device** – braille printers or large-print on-screen devices, or other devices or equipment designed exclusively for blind individuals for operating a computer. The need for the device or equipment must be **prescribed** by a medical practitioner. You can claim this expense for 2004 and later years.

**Deaf-blind intervening service** – must be used by an individual who is both blind and profoundly deaf, and the fees paid to persons in the business of providing such services. You can only claim this amount for 2005 and later years.

**Electronic speech synthesizer** – that enable individuals with a speech impairment to communicate by using a portable keyboard. The need for this device must be **prescribed** by a medical practitioner. You can claim this expense for 2004 and later years.

**Full-time attendant care service** – must be provided in Canada and used by individuals with a mental or physical infirmity. Amounts paid for attendant care services provided by the individual's spouse or common-law partner, or to someone under 18 years of age cannot be claimed. The need for this service must be **certified in writing** by a medical practitioner.

**Job coaching service** (other than job placement or career counselling services) – must be provided to an individual with a severe and prolonged impairment in physical or mental functions and the fees paid to persons in the business of providing such services. The need for this service must be **certified in writing** by a medical practitioner. You can only claim this expense for 2005 and later years.

**Note-taking service** – must be used by individuals with an impairment in physical or mental functions and the fees paid to persons in the business of providing such services. The need for this service must be **certified in writing** by a medical practitioner. You can claim this expense for 2004 and later years.

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**Optical scanner or similar device** – designed to be used by blind individuals to enable them to read print. The need for this device must be **prescribed** by a medical practitioner. You can claim this expense for 2004 and later years.

**Page turner** – that helps an individual turn the pages of a book or other bound document, when used by an individual with a severe and prolonged impairment in physical functions that markedly restricts the individual's ability to use his or her arms or hands. The need for this service must be **prescribed** by a medical practitioner. You can only claim this expense for 2005 and later years.

**Part-time attendant care** – only individuals who qualify for the disability amount can claim amounts paid for part-time attendant care as a disability supports deduction. Amounts paid for attendant care services provided by the individual's spouse or common-law partner, or to someone under 18 years of age **cannot** be claimed. The need for this service must be **certified in writing** by a medical practitioner.



**Reading devices and software** – designed to be used by a blind individual or an individual with a severe learning disability to enable the individual to read print. The need for this device must be **prescribed** by a medical practitioner. You can only claim this expense for 2005 and later years.

**Reading service** – must be provided to an individual who is blind or has a severe learning disability and the fees paid to persons in the business of providing such services. The need for this service must be **certified in writing** by a medical practitioner. You can only claim this expense for 2005 and later years.

**Real-time captioning service** – must be used by individuals who have a speech or hearing impairment and the fees paid to persons in the business of providing such services. You can claim this expense for 2004 and later years.

**Sign-language interpretation service** – must be used by individuals who have a speech or hearing impairment and the fees paid to persons in the business of providing such services. You can claim this expense for 2004 and later years.

**Talking textbook** – must be used by individuals with a perceptual disability, in connection with the individual's enrolment at a secondary school in Canada or designated educational institution. The need for this device must be **certified in writing** by a medical practitioner. You can claim this expense for 2004 and later years.

**Teletypewriter or similar device** – that enables individuals with a speech or hearing impairment to make and receive telephone calls. The need for this device must be **prescribed** by a medical practitioner. You can claim this expense for 2004 and later years.

**Tutoring service** – must be used by, and which are supplementary to the primary education of, individuals with a learning disability or an impairment in mental functions, and the fees paid to persons in the business of providing such services who are not related to the individual. The need for this service must be **certified in writing** by a medical practitioner. You can claim this expense for 2004 and later years.

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**Voice-recognition software** – must be used by individuals with an impairment in physical functions. The need for this software must be **certified in writing** by a medical practitioner. You can claim this expense for 2004 and later years.

#### Where can I find more information about the Disability Supports Deduction?

For a complete list of these eligible expenses with definitions go to <http://www.cra-arc.gc.ca/tax/individuals/topics/income-tax/return/completing/deductions/lines206-236/215/eligible-e.html>

Other conditions apply to making the claim. More complete information is available at <http://www.cra-arc.gc.ca/tax/individuals/topics/income-tax/return/completing/deductions/lines206-236/215/conditions-e.html>

### **CAREGIVER CREDIT**

#### What is the Caregiver Credit?

The caregiver credit may be claimed if, at any time of the year, the caregiver (either alone or with another person) maintained a dwelling where the caregiver and a dependant lived together. The maximum amount that can be claimed per year is \$4031.00 (for the 2007 taxation year).



#### Who is eligible to claim the credit and for whose care?

The credit may be claimed by the caregiver, the caregiver's spouse or the common-law partner for a dependant who is:

- A grandchild or child; or
- A brother, sister, niece, nephew, aunt, uncle, parent, or grandparent who was resident in Canada; and

The dependent must have met all of the following conditions:

- Aged 18 or over at the time he or she lived with the caregiver;
- Had a net income of less than \$16,989; and
- Been dependent on the caregiver due to physical or mental infirmity; or
- If the dependent is the parent or grandparent of the caregiver or the caregiver's spouse or common-law partner, the dependent must have been born in 1940 or earlier.

If the caregiver credit was not claimed for previous taxation years for which the claimant was eligible, it can be claimed retroactively to 1998 at \$500.00 per year.

#### Where can I find more information on the Caregiver Credit?

- **The Ontario Personal Tax Credits Return** online at:  
<http://www.cra-arc.gc.ca/E/pbg/tf/td1on/td1on-07e.pdf>



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### **GOODS AND SERVICES TAX (GST) REBATE**

#### **What is the GST Rebate?**

The GST Rebate is a refundable tax credit that provides cash payments to low and middle income Canadians to help offset the costs of paying the GST on taxable purchases. Effective July 1, 2006, the basic annual amounts are \$232.00 per adult and \$122.00 per child. There is also a supplement of up to \$122.00 for single individuals and \$122.00 for single parents. The amount of the GST rebate will vary depending on the person's reported income in the previous taxation year.

#### **Where can I find more information on the GST Rebate?**

- **Canada Revenue Agency GST Credit**  
<http://www.cra-arc.gc.ca/benefits/gsthst/menu-e.html>

### **OTHER TAX CREDITS AND DEDUCTIONS**

There are a number of other tax credits and deductions that pertain to people with a disability:

- Child Care Expenses.
- Amount for an Eligible Dependent.
- Disability Amount Transferred from a Dependent.
- Amounts Transferred from a Common Law Partner or Spouse.
- Allowable Amount of Medical Expenses for Other Dependents.
- Amount or Infirm Dependents Aged 18 or Older.
- Tuition and Education Amounts.
- Medical Expenses for Self, Spouse, Common Law Partner and Dependent Children Born 1988 or Later.
- Refundable Medical Expenses Supplement.

#### **Where can I find more information on other tax credits and deductions?**

- **Canada Revenue Agency**  
<http://www.cra-arc.gc.ca/tax/individuals/topics/income-tax/return/completing/deductions/lines206-236/214/menu-e.html>



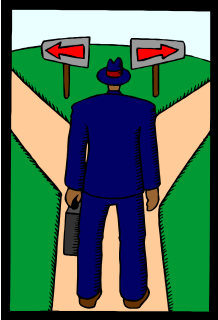
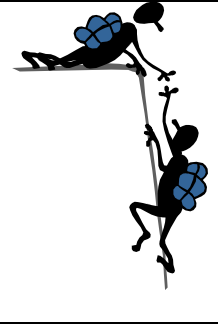
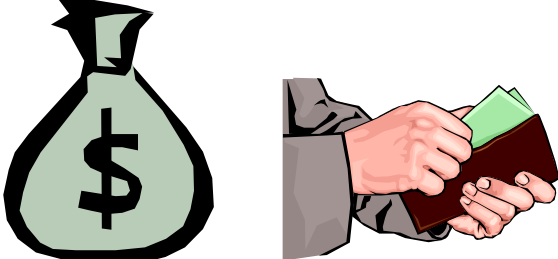


**GUIDE TO PROPERTY AND PERSONAL CARE**  
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**IV. MORE**

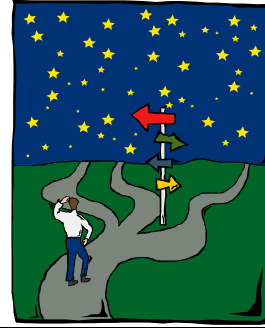
**A. USING THE GUIDE WITH AN OLDER ADULT**

The text and pictures on the following pages provide a simplified explanation of substitute decision-making. This material may be used to explain some of the concepts and issues to a person with a developmental disability.

EACH PERSON HAS THE RIGHT TO DECIDE	
SOMETIMES WE NEED HELP WITH A DECISION	
TWO IMPORTANT DECISIONS WE MAKE:	
1. ABOUT OUR HEALTH CARE	
2. ABOUT OUR MONEY	

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For Older Adults with a Developmental Disability

THERE MAY BE TIMES WE CANNOT MAKE DECISIONS  
FOR OURSELVES



AS WE GET OLDER OUR NEEDS MAY CHANGE



WE MAY NEED HELP



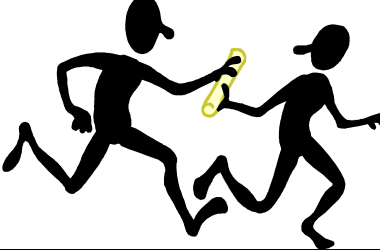

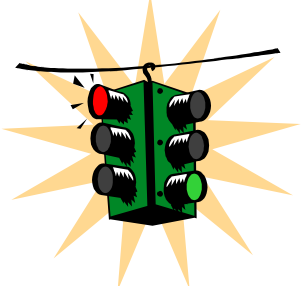


WE MAY NEED SOMEONE TO MAKE DECISIONS FOR  
US IF WE GET SICK



WE MAY NEED HELP WITH DECISIONS ABOUT MONEY



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<p>WE CAN ASK SOMEONE TO MAKE DECISIONS FOR US IF WE CAN'T DO IT OURSELVES</p>	 An illustration of two black stick figures running. The figure on the left is handing a yellow object, possibly a key or a small bag, to the figure on the right.
<p>THIS PERSON IS KNOWN AS THE SUBSTITUTE DECISION-MAKER</p>	 An illustration of a black stick figure holding a large yellow key.
<p>THERE ARE RULES ABOUT WHAT A SUBSTITUTE DECISION-MAKER CAN DO FOR US</p>	 An illustration of a traffic light with red, yellow, and green lights, set against a yellow starburst background.
<p>THE SUBSTITUTE DECISION-MAKER CAN MAKE DECISIONS ABOUT OUR HEALTHCARE</p>	 An illustration of a doctor in a white coat attending to a patient lying on a gurney.
<p>THE SUBSTITUTE DECISION-MAKER CAN MAKE DECISIONS ABOUT OUR MONEY</p>	 An illustration of a green dollar sign inside a green speech bubble.

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WE CAN TELL THE SUBSTITUTE DECISION-MAKER  
WHAT WE WANT



THINK ABOUT IT



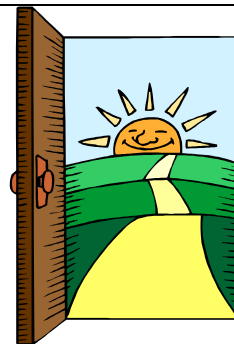
TALK TO YOUR SUPPORT CIRCLE



THEY CAN HELP YOU GET WHERE YOU WANT TO GO



THEY CAN HELP YOU FIND THE WAY THAT'S RIGHT  
FOR YOU



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### B. OTHER INFORMATION SOURCES

#### **Advising the Ontario Disability Support Program Recipient or Applicant who has received an Inheritance or Insurance Proceeds, By Harry Beatty, Barrister and Solicitor**

Available online from the Advocacy Centre for the Handicapped (ARCH)

[http://www.archdisabilitylaw.ca/publications/disorders/A73\\_2003\\_002616/13\\_odspRecipient/index.asp](http://www.archdisabilitylaw.ca/publications/disorders/A73_2003_002616/13_odspRecipient/index.asp)

#### **Advocacy Centre for the Elderly**

The Advocacy Centre for The Elderly (ACE) provides direct legal services to low-income seniors, public legal education and engages in law reform activities.

<http://www.advocacycentreelderly.org/>

#### **Community Legal Education Ontario**

CLEO is a community legal clinic dedicated to providing low-income and disadvantaged people in Ontario with the legal information they need to understand and exercise their legal rights.

<http://www.cleo.on.ca/>

#### **Disability Related Income Tax Provisions 2006**

Available online from the Advocacy Centre for the Handicapped (ARCH).

[http://www.archdisabilitylaw.ca/publications/disorders/A73\\_2003\\_002616/03\\_incomeTax.pdf](http://www.archdisabilitylaw.ca/publications/disorders/A73_2003_002616/03_incomeTax.pdf)

#### **Estate Planning for Beneficiaries with Disabilities in Ontario: Inheritances, Trusts and the Ontario Disability Support Program**

Available online from Community Legal Education Ontario (CLEO).

<http://www.cleonet.ca/items/150>

#### **Getting an Inheritance When You are on Ontario Disability Benefits**

Available online from Community Legal Education Ontario (CLEO).

<http://www.cleonet.ca/items/431>

#### **Ontario Partnership on Aging and Developmental Disabilities**

A partnership between the long term care and developmental disabilities sectors.

<http://www.opadd.on.ca/>

#### **Power of Attorney for Personal Care**

Available online from Community Legal Education Ontario (CLEO).

<http://www.cleonet.ca/items/491>

#### **Powers of Attorney Kit: Forms and Instructions for Power of Attorney for Personal Care and Power of Attorney for Property**

Available online from Community Legal Education Ontario (CLEO).

<http://www.cleonet.ca/items/648>

#### **Advance Care Planning and End of Life Decision-Making: More than just Documents**

Common misunderstandings and legal problems with health care facility advance health care directive forms. Judith A. Wahl.

[http://www.cleonet.ca/instance.php?instance\\_id=84](http://www.cleonet.ca/instance.php?instance_id=84)

#### **E-Laws Ontario**

Provides access to all Ontario legislation. Includes a search engine. All legislation is available for viewing and downloading from

<http://www.search.e-laws.gov.on.ca/en/search/>

## **GUIDE TO PROPERTY AND PERSONAL CARE**

### **For Older Adults with a Developmental Disability**

#### **C. THE ONTARIO PARTNERSHIP ON AGING AND DEVELOPMENTAL DISABILITIES (OPADD)**

OPADD's work focuses on achieving our Vision: that older adults with a developmental disability have the same rights to support and services as all older Ontarians.

The Ontario Partnership is a collaborative group of like-minded organizations and groups that want to respond to the needs of persons with a developmental disability as they age. Together we identify priority issues in the area of aging and developmental disabilities and seek solutions. Participants in the partnership include long term care and developmental service providers, government, educational organizations, regional and local projects. Our work focuses on building capacity in the service system to ensure quality of life for people with a developmental disability as they age.

We are concerned with all aspects of the aging process and how it affects people with a developmental disability. Accordingly, we are working on a number of initiatives that will strengthen the capacity of individuals, their families and the service system to support people as they age. This includes, but is not limited to, ensuring that older adults with a developmental disability can access the full range of support services available to all older adults in Ontario. Our long range goal is a service system that has capacity to sustain quality of life for all older adults with a developmental disability. Our primary objectives include:

- Support development of cross sector dialogue, learning and planning capacity through the establishment and functioning of regional committees.
- Identify and test new models of support through local cross sector pilot projects.
- Ensure the needs of older adults with a developmental disability are an integral and recognized part of the planning agenda through collaborative work with planning bodies.
- Uphold the continuing evolution of the public policy agenda to reflect the needs of older adults with a developmental disability through cross sector dialogue and consultation with legislators.
- Strengthen the capacity for research on aging and developmental disabilities through applied research projects and through dialogue with research bodies and educational institutions.
- Build system capacity to meet the emerging needs of older adults with a developmental disability through dissemination of information, knowledge and resources.

For more information [www.opadd.on.ca](http://www.opadd.on.ca)

