

Health Care Consent Act, 1996

S.O. 1996, CHAPTER 2 Schedule A

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PART I **GENERAL**

Purposes

1. The purposes of this Act are,
 - (a) to provide rules with respect to consent to treatment that apply consistently in all settings;
 - (b) to facilitate treatment, admission to care facilities, and personal assistance services, for persons lacking the capacity to make decisions about such matters;
 - (c) to enhance the autonomy of persons for whom treatment is proposed, persons for whom admission to a care facility is proposed and persons who are to receive personal assistance services by,
 - (i) allowing those who have been found to be incapable to apply to a tribunal for a review of the finding,
 - (ii) allowing incapable persons to request that a representative of their choice be appointed by the tribunal for the purpose of making decisions on their behalf concerning treatment, admission to a care facility or personal assistance services, and
 - (iii) requiring that wishes with respect to treatment, admission to a care facility or personal assistance services, expressed by persons while capable and after attaining 16 years of age, be adhered to;
 - (d) to promote communication and understanding between health practitioners and their patients or clients;
 - (e) to ensure a significant role for supportive family members when a person lacks the capacity to make a decision about a treatment, admission to a care facility or a personal assistance service; and
 - (f) to permit intervention by the Public Guardian and Trustee only as a last resort in decisions on behalf of incapable persons concerning treatment, admission to a care facility or personal assistance services. 1996, c. 2, Sched. A, s. 1.

Interpretation

2. (1) In this Act,

“attorney for personal care” means an attorney under a power of attorney for personal care given under the *Substitute Decisions Act, 1992*; (“procureur au soin de la personne”)

“Board” means the Consent and Capacity Board; (“Commission”)

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

“care facility” means,

- (a) an approved charitable home for the aged, as defined in the *Charitable Institutions Act*,
- (b) a home or joint home, as defined in the *Homes for the Aged and Rest Homes Act*,
- (c) a nursing home, as defined in the *Nursing Homes Act*, or
- (d) a facility prescribed by the regulations as a care facility; (“établissement de soins”)

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “care facility” is repealed by the Statutes of Ontario, 2007, chapter 8, subsection 207 (1) and the following substituted:

“care facility” means,

- (a) a long-term care home as defined in the *Long-Term Care Homes Act, 2007*, or
- (b) a facility prescribed by the regulations as a care facility; (“établissement de soins”)

See: 2007, c. 8, ss. 207 (1), 232 (2).

“community treatment plan” has the same meaning as in the *Mental Health Act*; (“plan de traitement en milieu communautaire”)

“course of treatment” means a series or sequence of similar treatments administered to a person over a period of time for a particular health problem; (“série de traitements”)

“evaluator” means, in the circumstances prescribed by the regulations, a person described in clause (a), (l), (m), (o), (p) or (q) of the definition of “health practitioner” in this subsection or a member of a category of persons prescribed by the regulations as evaluators; (“appréciateur”)

“guardian of the person” means a guardian of the person appointed under the *Substitute Decisions Act, 1992*; (“tuteur à la personne”)

“health practitioner” means,

- (a) a member of the College of Audiologists and Speech-Language Pathologists of Ontario,
- (b) a member of the College of Chiropractors of Ontario, including a member who is a podiatrist,
- (c) a member of the College of Chiropractors of Ontario,
- (d) a member of the College of Dental Hygienists of Ontario,
- (e) a member of the Royal College of Dental Surgeons of Ontario,
- (f) a member of the College of Denturists of Ontario,
- (g) a member of the College of Dietitians of Ontario,

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “health practitioner” is amended by the Statutes of Ontario, 2007, chapter 10, Schedule Q, section 13 by adding the following clause:

(g.0.1) a member of the College of Homeopaths of Ontario,

See: 2007, c. 10, Sched. Q, ss. 13, 15 (2).

Clause (g.0.1) was enacted as clause (g.1) in source law, Statutes of Ontario, 2007, chapter 10, Schedule Q, section 13. The clause is renumbered in this consolidation to distinguish it from clause (g.1) enacted by source law, Statutes of Ontario, 2007, chapter 10, Schedule O, section 13.

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “health practitioner” is amended by the Statutes of Ontario, 2007, chapter 10, Schedule O, section 13 by adding the following clause:

(g.1) a member of the College of Kinesiologists of Ontario,

See: 2007, c. 10, Sched. O, ss. 13, 15 (2).

- (h) a member of the College of Massage Therapists of Ontario,
- (i) a member of the College of Medical Laboratory Technologists of Ontario,
- (j) a member of the College of Medical Radiation Technologists of Ontario,
- (k) a member of the College of Midwives of Ontario,

- (l) a member of the College of Nurses of Ontario,
- (m) a member of the College of Occupational Therapists of Ontario,
- (n) a member of the College of Optometrists of Ontario,
- (o) a member of the College of Physicians and Surgeons of Ontario,
- (p) a member of the College of Physiotherapists of Ontario,
- (q) a member of the College of Psychologists of Ontario,

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “health practitioner” is amended by the Statutes of Ontario, 2007, chapter 10, Schedule R, section 14 by adding the following clause:

(q.1) a member of the College of Psychotherapists and Registered Mental Health Therapists of Ontario,

See: 2007, c. 10, Sched. R, ss. 14, 20 (2).

- (r) a member of the College of Respiratory Therapists of Ontario,
- (s) a naturopath registered as a drugless therapist under the *Drugless Practitioners Act*, or

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (s) is repealed by the Statutes of Ontario, 2007, chapter 10, Schedule P, section 15 and the following substituted:

(s) a member of the College of Naturopaths of Ontario, or

See: 2007, c. 10, Sched. P, ss. 15, 21 (2).

(t) a member of a category of persons prescribed by the regulations as health practitioners; (“praticien de la santé”)

“hospital” means an institution as defined in the *Mental Hospitals Act*, a private hospital as defined in the *Private Hospitals Act* or a hospital as defined in the *Public Hospitals Act*; (“hôpital”)

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

“mental disorder” has the same meaning as in the *Mental Health Act*; (“trouble mental”)

“personal assistance service” means assistance with or supervision of hygiene, washing, dressing, grooming, eating, drinking, elimination, ambulation, positioning or any other routine activity of living, and includes a group of personal assistance services or a plan setting out personal assistance services to be provided to a person, but does not include anything prescribed by the regulations as not constituting a personal assistance service; (“service d’aide personnelle”)

“plan of treatment” means a plan that,

- (a) is developed by one or more health practitioners,
- (b) deals with one or more of the health problems that a person has and may, in addition, deal with one or more of the health problems that the person is likely to have in the future given the person’s current health condition, and
- (c) provides for the administration to the person of various treatments or courses of treatment and may, in addition, provide for the withholding or withdrawal of treatment in light of the person’s current health condition; (“plan de traitement”)

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

“recipient” means a person who is to be provided with one or more personal assistance services,

- (a) in an approved charitable home for the aged, as defined in the *Charitable Institutions Act*,
- (b) in a home or joint home, as defined in the *Homes for the Aged and Rest Homes Act*,
- (c) in a nursing home, as defined in the *Nursing Homes Act*,
- (d) in a place prescribed by the regulations in the circumstances prescribed by the regulations,
- (e) under a program prescribed by the regulations in the circumstances prescribed by the regulations, or
- (f) by a provider prescribed by the regulations in the circumstances prescribed by the regulations; (“bénéficiaire”)

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “recipient” is repealed by the Statutes of Ontario, 2007, chapter 8, subsection 207 (1) and the following substituted:

“recipient” means a person who is to be provided with one or more personal assistance services,

- (a) in a long-term care home as defined in the *Long-Term Care Homes Act, 2007*,
- (b) in a place prescribed by the regulations in the circumstances prescribed by the regulations,
- (c) under a program prescribed by the regulations in the circumstances prescribed by the regulations, or
- (d) by a provider prescribed by the regulations in the circumstances prescribed by the regulations; (“bénéficiaire”)

See: 2007, c. 8, ss. 207 (1), 232 (2).

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

“treatment” means 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, but does not include,

- (a) the assessment for the purpose of this Act of a person’s capacity with respect to a treatment, admission to a care facility or a personal assistance service, the assessment for the purpose of the *Substitute Decisions Act, 1992* of a person’s capacity to manage property or a person’s capacity for personal care, or the assessment of a person’s capacity for any other purpose,
- (b) the assessment or examination of a person to determine the general nature of the person’s condition,
- (c) the taking of a person’s health history,
- (d) the communication of an assessment or diagnosis,
- (e) the admission of a person to a hospital or other facility,
- (f) a personal assistance service,
- (g) a treatment that in the circumstances poses little or no risk of harm to the person,
- (h) anything prescribed by the regulations as not constituting treatment. (“traitement”) 1996, c. 2, Sched. A, s. 2 (1); 2000, c. 9, s. 31.

Refusal of consent

- (2) A reference in this Act to refusal of consent includes withdrawal of consent. 1996, c. 2, Sched. A, s. 2 (2).

Meaning of “excluded act”

- 3. (1) In this section,

“excluded act” means,

- (a) anything described in clause (b) or (g) of the definition of “treatment” in subsection 2 (1), or
- (b) anything described in clause (h) of the definition of “treatment” in subsection 2 (1) and prescribed by the regulations as an excluded act. 1996, c. 2, Sched. A, s. 3 (1).

Excluded act considered treatment

(2) If a health practitioner decides to proceed as if an excluded act were a treatment for the purpose of this Act, this Act and the regulations apply as if the excluded act were a treatment within the meaning of this Act. 1996, c. 2, Sched. A, s. 3 (2).

Capacity

4. (1) A person is capable with respect to a treatment, admission to a care facility or a personal assistance service if the person is able to understand the information that is relevant to making a decision about the treatment, admission or personal assistance service, as the case may be, and able to appreciate the reasonably foreseeable consequences of a decision or lack of decision. 1996, c. 2, Sched. A, s. 4 (1).

Presumption of capacity

(2) A person is presumed to be capable with respect to treatment, admission to a care facility and personal assistance services. 1996, c. 2, Sched. A, s. 4 (2).

Exception

(3) A person is entitled to rely on the presumption of capacity with respect to another person unless he or she has reasonable grounds to believe that the other person is incapable with respect to the treatment, the admission or the personal assistance service, as the case may be. 1996, c. 2, Sched. A, s. 4 (3).

Wishes

5. (1) A person may, while capable, express wishes with respect to treatment, admission to a care facility or a personal assistance service. 1996, c. 2, Sched. A, s. 5 (1).

Manner of expression

(2) Wishes may be expressed in a power of attorney, in a form prescribed by the regulations, in any other written form, orally or in any other manner. 1996, c. 2, Sched. A, s. 5 (2).

Later wishes prevail

(3) Later wishes expressed while capable prevail over earlier wishes. 1996, c. 2, Sched. A, s. 5 (3).

Research, sterilization, transplants

6. This Act does not affect the law relating to giving or refusing consent on another person's behalf to any of the following procedures:

1. A procedure whose primary purpose is research.
2. Sterilization that is not medically necessary for the protection of the person's health.
3. The removal of regenerative or non-regenerative tissue for implantation in another person's body. 1996, c. 2, Sched. A, s. 6.

Restraint, confinement

7. This Act does not affect the common law duty of a caregiver to restrain or confine a person when immediate action is necessary to prevent serious bodily harm to the person or to others. 1996, c. 2, Sched. A, s. 7.

PART II TREATMENT

GENERAL

Application of Part

8. (1) Subject to section 3, this Part applies to treatment. 1996, c. 2, Sched. A, s. 8 (1).

Law not affected

(2) Subject to section 3, this Part does not affect the law relating to giving or refusing consent to anything not included in the definition of "treatment" in subsection 2 (1). 1996, c. 2, Sched. A, s. 8 (2).

Meaning of "substitute decision-maker"

9. In this Part,

"substitute decision-maker" means a person who is authorized under section 20 to give or refuse consent to a treatment on behalf of a person who is incapable with respect to the treatment. 1996, c. 2, Sched. A, s. 9.

CONSENT TO TREATMENT

No treatment without consent

10. (1) A health practitioner who proposes a treatment for a person shall not administer the treatment, and shall take reasonable steps to ensure that it is not administered, unless,

- (a) he or she is of the opinion that the person is capable with respect to the treatment, and the person has given consent; or
- (b) he or she is of the opinion that the person is incapable with respect to the treatment, and the person's substitute decision-maker has given consent on the person's behalf in accordance with this Act. 1996, c. 2, Sched. A, s. 10 (1).

Opinion of Board or court governs

(2) If the health practitioner is of the opinion that the person is incapable with respect to the treatment, but the person is found to be capable with respect to the treatment by the Board on an application for review of the health practitioner's finding, or by a court on an appeal of the Board's decision, the health practitioner shall not administer the treatment, and shall take reasonable steps to ensure that it is not administered, unless the person has given consent. 1996, c. 2, Sched. A, s. 10 (2).

Elements of consent

11. (1) The following are the elements required for consent to treatment:

1. The consent must relate to the treatment.
2. The consent must be informed.
3. The consent must be given voluntarily.
4. The consent must not be obtained through misrepresentation or fraud. 1996, c. 2, Sched. A, s. 11 (1).

Informed consent

- (2) A consent to treatment is informed if, before giving it,
- (a) the person received the information about the matters set out in subsection (3) that a reasonable person in the same circumstances would require in order to make a decision about the treatment; and
 - (b) the person received responses to his or her requests for additional information about those matters. 1996, c. 2, Sched. A, s. 11 (2).

Same

- (3) The matters referred to in subsection (2) are:
1. The nature of the treatment.
 2. The expected benefits of the treatment.
 3. The material risks of the treatment.
 4. The material side effects of the treatment.
 5. Alternative courses of action.
 6. The likely consequences of not having the treatment. 1996, c. 2, Sched. A, s. 11 (3).

Express or implied

- (4) Consent to treatment may be express or implied. 1996, c. 2, Sched. A, s. 11 (4).

Included consent

12. Unless it is not reasonable to do so in the circumstances, a health practitioner is entitled to presume that consent to a treatment includes,

- (a) consent to variations or adjustments in the treatment, if the nature, expected benefits, material risks and material side effects of the changed treatment are not significantly different from the nature, expected benefits, material risks and material side effects of the original treatment; and
- (b) consent to the continuation of the same treatment in a different setting, if there is no significant change in the expected benefits, material risks or material side effects of the treatment as a result of the change in the setting in which it is administered. 1996, c. 2, Sched. A, s. 12.

Plan of treatment

13. If a plan of treatment is to be proposed for a person, one health practitioner may, on behalf of all the health practitioners involved in the plan of treatment,

- (a) propose the plan of treatment;
- (b) determine the person's capacity with respect to the treatments referred to in the plan of treatment; and
- (c) obtain a consent or refusal of consent in accordance with this Act,
 - (i) from the person, concerning the treatments with respect to which the person is found to be capable, and
 - (ii) from the person's substitute decision-maker, concerning the treatments with respect to which the person is found to be incapable. 1996, c. 2, Sched. A, s. 13.

Withdrawal of consent

14. A consent that has been given by or on behalf of the person for whom the treatment was proposed may be withdrawn at any time,

- (a) by the person, if the person is capable with respect to the treatment at the time of the withdrawal;

- (b) by the person's substitute decision-maker, if the person is incapable with respect to the treatment at the time of the withdrawal. 1996, c. 2, Sched. A, s. 14.

CAPACITY

Capacity depends on treatment

15. (1) A person may be incapable with respect to some treatments and capable with respect to others. 1996, c. 2, Sched. A, s. 15 (1).

Capacity depends on time

(2) A person may be incapable with respect to a treatment at one time and capable at another. 1996, c. 2, Sched. A, s. 15 (2).

Return of capacity

16. If, after consent to a treatment is given or refused on a person's behalf in accordance with this Act, the person becomes capable with respect to the treatment in the opinion of the health practitioner, the person's own decision to give or refuse consent to the treatment governs. 1996, c. 2, Sched. A, s. 16.

Information

17. A health practitioner shall, in the circumstances and manner specified in guidelines established by the governing body of the health practitioner's profession, provide to persons found by the health practitioner to be incapable with respect to treatment such information about the consequences of the findings as is specified in the guidelines. 1996, c. 2, Sched. A, s. 17.

Treatment must not begin

18. (1) This section applies if,

- (a) a health practitioner proposes a treatment for a person and finds that the person is incapable with respect to the treatment;
- (b) before the treatment is begun, the health practitioner is informed that the person intends to apply, or has applied, to the Board for a review of the finding; and
- (c) the application to the Board is not prohibited by subsection 32 (2). 1996, c. 2, Sched. A, s. 18 (1).

Same

(2) This section also applies if,

- (a) a health practitioner proposes a treatment for a person and finds that the person is incapable with respect to the treatment;
- (b) before the treatment is begun, the health practitioner is informed that,
 - (i) the incapable person intends to apply, or has applied, to the Board for appointment of a representative to give or refuse consent to the treatment on his or her behalf, or
 - (ii) another person intends to apply, or has applied, to the Board to be appointed as the representative of the incapable person to give or refuse consent to the treatment on his or her behalf; and
- (c) the application to the Board is not prohibited by subsection 33 (3). 1996, c. 2, Sched. A, s. 18 (2).

Same

(3) In the circumstances described in subsections (1) and (2), the health practitioner shall not begin the treatment, and shall take reasonable steps to ensure that the treatment is not begun,

- (a) until 48 hours have elapsed since the health practitioner was first informed of the intended application to the Board without an application being made;
- (b) until the application to the Board has been withdrawn;
- (c) until the Board has rendered a decision in the matter, if none of the parties to the application before the Board has informed the health practitioner that he or she intends to appeal the Board's decision; or
- (d) if a party to the application before the Board has informed the health practitioner that he or she intends to appeal the Board's decision,

- (i) until the period for commencing the appeal has elapsed without an appeal being commenced, or
- (ii) until the appeal of the Board's decision has been finally disposed of. 1996, c. 2, Sched. A, s. 18 (3).

Emergency

(4) This section does not apply if the health practitioner is of the opinion that there is an emergency within the meaning of subsection 25 (1). 1996, c. 2, Sched. A, s. 18 (4).

Order authorizing treatment pending appeal

19. (1) If an appeal is taken from a Board or court decision that has the effect of authorizing a person to consent to a treatment, the treatment may be administered before the final disposition of the appeal, despite section 18, if the court to which the appeal is taken so orders and the consent is given. 1996, c. 2, Sched. A, s. 19 (1).

Criteria for order

- (2) The court may make the order if it is satisfied,
 - (a) that,
 - (i) the treatment will or is likely to improve substantially the condition of the person to whom it is to be administered, and the person's condition will not or is not likely to improve without the treatment, or
 - (ii) the person's condition will or is likely to deteriorate substantially, or to deteriorate rapidly, without the treatment, and the treatment will or is likely to prevent the deterioration or to reduce substantially its extent or its rate;
 - (b) that the benefit the person is expected to obtain from the treatment outweighs the risk of harm to him or her;
 - (c) that the treatment is the least restrictive and least intrusive treatment that meets the requirements of clauses (a) and (b); and
 - (d) that the person's condition makes it necessary to administer the treatment before the final disposition of the appeal. 1996, c. 2, Sched. A, s. 19 (2).

CONSENT ON INCAPABLE PERSON'S BEHALF

Consent

List of persons who may give or refuse consent

20. (1) If a person is incapable with respect to a treatment, consent may be given or refused on his or her behalf by a person described in one of the following paragraphs:

1. The incapable person's guardian of the person, if the guardian has authority to give or refuse consent to the treatment.
2. The incapable person's attorney for personal care, if the power of attorney confers authority to give or refuse consent to the treatment.
3. The incapable person's representative appointed by the Board under section 33, if the representative has authority to give or refuse consent to the treatment.
4. The incapable person's spouse or partner.
5. A child or parent of the incapable person, or a children's aid society or other person who is lawfully entitled to give or refuse consent to the treatment in the place of the parent. This paragraph does not include a parent who has only a right of access. If a children's aid society or other person is lawfully entitled to give or refuse consent to the treatment in the place of the parent, this paragraph does not include the parent.
6. A parent of the incapable person who has only a right of access.
7. A brother or sister of the incapable person.
8. Any other relative of the incapable person. 1996, c. 2, Sched. A, s. 20 (1).

Requirements

- (2) A person described in subsection (1) may give or refuse consent only if he or she,
 - (a) is capable with respect to the treatment;
 - (b) is at least 16 years old, unless he or she is the incapable person's parent;

- (c) is not prohibited by court order or separation agreement from having access to the incapable person or giving or refusing consent on his or her behalf;
- (d) is available; and
- (e) is willing to assume the responsibility of giving or refusing consent. 1996, c. 2, Sched. A, s. 20 (2).

Ranking

(3) A person described in a paragraph of subsection (1) may give or refuse consent only if no person described in an earlier paragraph meets the requirements of subsection (2). 1996, c. 2, Sched. A, s. 20 (3).

Same

(4) Despite subsection (3), a person described in a paragraph of subsection (1) who is present or has otherwise been contacted may give or refuse consent if he or she believes that no other person described in an earlier paragraph or the same paragraph exists, or that although such a person exists, the person is not a person described in paragraph 1, 2 or 3 and would not object to him or her making the decision. 1996, c. 2, Sched. A, s. 20 (4).

No person in subs. (1) to make decision

(5) If no person described in subsection (1) meets the requirements of subsection (2), the Public Guardian and Trustee shall make the decision to give or refuse consent. 1996, c. 2, Sched. A, s. 20 (5).

Conflict between persons in same paragraph

(6) If two or more persons who are described in the same paragraph of subsection (1) and who meet the requirements of subsection (2) disagree about whether to give or refuse consent, and if their claims rank ahead of all others, the Public Guardian and Trustee shall make the decision in their stead. 1996, c. 2, Sched. A, s. 20 (6).

Meaning of “spouse”

- (7) Subject to subsection (8), two persons are spouses for the purpose of this section if,
 - (a) they are married to each other; or
 - (b) they are living in a conjugal relationship outside marriage and,
 - (i) have cohabited for at least one year,
 - (ii) are together the parents of a child, or
 - (iii) have together entered into a cohabitation agreement under section 53 of the *Family Law Act*. 1996, c. 2, Sched. A, s. 20 (7); 2004, c. 3, Sched. A, s. 84 (1-3).

Not spouse

(8) Two persons are not spouses for the purpose of this section if they are living separate and apart as a result of a breakdown of their relationship. 2004, c. 3, Sched. A, s. 84 (4).

Meaning of “partner”

- (9) For the purpose of this section, “partner” means,
 - (a) REPEALED: 2004, c. 3, Sched. A, s. 84 (5).
 - (b) either of two persons who have lived together for at least one year and have a close personal relationship that is of primary importance in both persons’ lives. 2002, c. 18, Sched. A, s. 10; 2004, c. 3; Sched. A, s. 84 (5, 6).

Meaning of “relative”

(10) Two persons are relatives for the purpose of this section if they are related by blood, marriage or adoption. 1996, c. 2, Sched. A, s. 20 (10).

Meaning of “available”

(11) For the purpose of clause (2) (d), a person is available if it is possible, within a time that is reasonable in the circumstances, to communicate with the person and obtain a consent or refusal. 1996, c. 2, Sched. A, s. 20 (11).

Principles for giving or refusing consent

21. (1) A person who gives or refuses consent to a treatment on an incapable person’s behalf shall do so in accordance with the following principles:

1. If the person knows of a wish applicable to the circumstances that the incapable person expressed while capable and after attaining 16 years of age, the person shall give or refuse consent in accordance with the wish.
2. If the person does not know of a wish applicable to the circumstances that the incapable person expressed while capable and after attaining 16 years of age, or if it is impossible to comply with the wish, the person shall act in the incapable person's best interests. 1996, c. 2, Sched. A, s. 21 (1).

Best interests

(2) In deciding what the incapable person's best interests are, the person who gives or refuses consent on his or her behalf shall take into consideration,

- (a) the values and beliefs that the person knows the incapable person held when capable and believes he or she would still act on if capable;
- (b) any wishes expressed by the incapable person with respect to the treatment that are not required to be followed under paragraph 1 of subsection (1); and
- (c) the following factors:
 1. Whether the treatment is likely to,
 - i. improve the incapable person's condition or well-being,
 - ii. prevent the incapable person's condition or well-being from deteriorating, or
 - iii. reduce the extent to which, or the rate at which, the incapable person's condition or well-being is likely to deteriorate.
 2. Whether the incapable person's condition or well-being is likely to improve, remain the same or deteriorate without the treatment.
 3. Whether the benefit the incapable person is expected to obtain from the treatment outweighs the risk of harm to him or her.
 4. Whether a less restrictive or less intrusive treatment would be as beneficial as the treatment that is proposed. 1996, c. 2, Sched. A, s. 21 (2).

Information

22. (1) Before giving or refusing consent to a treatment on an incapable person's behalf, a substitute decision-maker is entitled to receive all the information required for an informed consent as described in subsection 11 (2). 1996, c. 2, Sched. A, s. 22.

Conflict

(2) Subsection (1) prevails despite anything to the contrary in the *Personal Health Information Protection Act, 2004*. 2004, c. 3, Sched. A, s. 84 (7).

Ancillary treatment

23. Authority to consent to a treatment on an incapable person's behalf includes authority to consent to another treatment that is necessary and ancillary to the treatment, even if the incapable person is capable with respect to the necessary and ancillary treatment. 1996, c. 2, Sched. A, s. 23.

Admission to hospital, etc.

24. (1) Subject to subsection (2), a substitute decision-maker who consents to a treatment on an incapable person's behalf may consent to the incapable person's admission to a hospital or psychiatric facility or to another health facility prescribed by the regulations, for the purpose of the treatment. 1996, c. 2, Sched. A, s. 24 (1).

Objection, psychiatric facility

(2) If the incapable person is 16 years old or older and objects to being admitted to a psychiatric facility for treatment of a mental disorder, consent to his or her admission may be given only by,

- (a) his or her guardian of the person, if the guardian has authority to consent to the admission; or
- (b) his or her attorney for personal care, if the power of attorney contains a provision authorizing the attorney to use force that is necessary and reasonable in the circumstances to admit the incapable person to the psychiatric facility and the provision is effective under subsection 50 (1) of the *Substitute Decisions Act, 1992*. 1996, c. 2, Sched. A, s. 24 (2).

EMERGENCY TREATMENT

Emergency treatment

Meaning of “emergency”

25. (1) For the purpose of this section and section 27, 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. 1996, c. 2, Sched. A, s. 25 (1).

Emergency treatment without consent: incapable person

(2) Despite section 10, a treatment may be administered without consent to a person who is incapable with respect to the treatment, if, in the opinion of the health practitioner proposing the treatment,

- (a) there is an emergency; and
- (b) the delay required to obtain a consent or refusal on the person’s behalf will prolong the suffering that the person is apparently experiencing or will put the person at risk of sustaining serious bodily harm. 1996, c. 2, Sched. A, s. 25 (2).

Emergency treatment without consent: capable person

(3) Despite section 10, a treatment may be administered without consent to a person who is apparently capable with respect to the treatment, if, in the opinion of the health practitioner proposing the treatment,

- (a) there is an emergency;
- (b) the communication required in order for the person to give or refuse consent to the treatment cannot take place because of a language barrier or because the person has a disability that prevents the communication from taking place;
- (c) steps that are reasonable in the circumstances have been taken to find a practical means of enabling the communication to take place, but no such means has been found;
- (d) the delay required to find a practical means of enabling the communication to take place will prolong the suffering that the person is apparently experiencing or will put the person at risk of sustaining serious bodily harm; and
- (e) there is no reason to believe that the person does not want the treatment. 1996, c. 2, Sched. A, s. 25 (3).

Examination without consent

(4) Despite section 10, an examination or diagnostic procedure that constitutes treatment may be conducted by a health practitioner without consent if,

- (a) the examination or diagnostic procedure is reasonably necessary in order to determine whether there is an emergency; and
- (b) in the opinion of the health practitioner,
 - (i) the person is incapable with respect to the examination or diagnostic procedure, or
 - (ii) clauses (3) (b) and (c) apply to the examination or diagnostic procedure. 1996, c. 2, Sched. A, s. 25 (4).

Record

(5) After administering a treatment in reliance on subsection (2) or (3), the health practitioner shall promptly note in the person’s record the opinions held by the health practitioner that are required by the subsection on which he or she relied. 1996, c. 2, Sched. A, s. 25 (5).

Continuing treatment

(6) Treatment under subsection (2) may be continued only for as long as is reasonably necessary to find the incapable person’s substitute decision-maker and to obtain from him or her a consent, or refusal of consent, to the continuation of the treatment. 1996, c. 2, Sched. A, s. 25 (6).

Same

(7) Treatment under subsection (3) may be continued only for as long as is reasonably necessary to find a practical means of enabling the communication to take place so that the person can give or refuse consent to the continuation of the treatment. 1996, c. 2, Sched. A, s. 25 (7).

Search

(8) When a treatment is begun under subsection (2) or (3), the health practitioner shall ensure that reasonable efforts are made for the purpose of finding the substitute decision-maker, or a means of enabling the communication to take place, as the case may be. 1996, c. 2, Sched. A, s. 25 (8).

Return of capacity

(9) If, after a treatment is begun under subsection (2), the person becomes capable with respect to the treatment in the opinion of the health practitioner, the person's own decision to give or refuse consent to the continuation of the treatment governs. 1996, c. 2, Sched. A, s. 25 (9).

No treatment contrary to wishes

26. A health practitioner shall not administer a treatment under section 25 if the health practitioner has reasonable grounds to believe that the person, while capable and after attaining 16 years of age, expressed a wish applicable to the circumstances to refuse consent to the treatment. 1996, c. 2, Sched. A, s. 26.

Emergency treatment despite refusal

27. If consent to a treatment is refused on an incapable person's behalf by his or her substitute decision-maker, the treatment may be administered despite the refusal if, in the opinion of the health practitioner proposing the treatment,

- (a) there is an emergency; and
- (b) the substitute decision-maker did not comply with section 21. 1996, c. 2, Sched. A, s. 27.

Admission to hospital, etc.

28. The authority to administer a treatment to a person under section 25 or 27 includes authority to have the person admitted to a hospital or psychiatric facility for the purpose of the treatment, unless the person objects and the treatment is primarily treatment of a mental disorder. 1996, c. 2, Sched. A, s. 28.

PROTECTION FROM LIABILITY

Protection from liability

Apparently valid consent to treatment

29. (1) If a treatment is administered to a person with a consent that a health practitioner believes, on reasonable grounds and in good faith, to be sufficient for the purpose of this Act, the health practitioner is not liable for administering the treatment without consent. 1996, c. 2, Sched. A, s. 29 (1).

Apparently valid refusal of treatment

(2) If a treatment is not administered to a person because of a refusal that a health practitioner believes, on reasonable grounds and in good faith, to be sufficient for the purpose of this Act, the health practitioner is not liable for failing to administer the treatment. 1996, c. 2, Sched. A, s. 29 (2).

Apparently valid consent to withholding or withdrawal

(3) If a treatment is withheld or withdrawn in accordance with a plan of treatment and with a consent to the plan of treatment that a health practitioner believes, on reasonable grounds and in good faith, to be sufficient for the purpose of this Act, the health practitioner is not liable for withholding or withdrawing the treatment. 1996, c. 2, Sched. A, s. 29 (3).

Emergency: treatment administered

(4) A health practitioner who, in good faith, administers a treatment to a person under section 25 or 27 is not liable for administering the treatment without consent. 1996, c. 2, Sched. A, s. 29 (4).

Emergency: treatment not administered

(5) A health practitioner who, in good faith, refrains from administering a treatment in accordance with section 26 is not liable for failing to administer the treatment. 1996, c. 2, Sched. A, s. 29 (5).

Reliance on assertion

- (6) If a person who gives or refuses consent to a treatment on an incapable person's behalf asserts that he or she,
 - (a) is a person described in subsection 20 (1) or clause 24 (2) (a) or (b) or an attorney for personal care described in clause 32 (2) (b);
 - (b) meets the requirement of clause 20 (2) (b) or (c); or
 - (c) holds the opinions required under subsection 20 (4),

a health practitioner is entitled to rely on the accuracy of the assertion, unless it is not reasonable to do so in the circumstances. 1996, c. 2, Sched. A, s. 29 (6).

Person making decision on another's behalf

30. A person who gives or refuses consent to a treatment on another person's behalf, acting in good faith and in accordance with this Act, is not liable for giving or refusing consent. 1996, c. 2, Sched. A, s. 30.

Admission to hospital, etc.

31. (1) Sections 29 and 30, except subsection 29 (4), apply, with necessary modifications, to admission of the incapable person to a hospital, psychiatric facility or other health facility referred to in section 24, for the purpose of treatment. 1996, c. 2, Sched. A, s. 31 (1).

Same

(2) A health practitioner who, in good faith, has a person admitted to a hospital or psychiatric facility under section 28 is not liable for having the person admitted without consent. 1996, c. 2, Sched. A, s. 31 (2).

APPLICATIONS TO BOARD

Application for review of finding of incapacity

32. (1) A person who is the subject of a treatment may apply to the Board for a review of a health practitioner's finding that he or she is incapable with respect to the treatment. 1996, c. 2, Sched. A, s. 32 (1).

Exception

- (2) Subsection (1) does not apply to,
- (a) a person who has a guardian of the person, if the guardian has authority to give or refuse consent to the treatment;
 - (b) a person who has an attorney for personal care, if the power of attorney contains a provision waiving the person's right to apply for the review and the provision is effective under subsection 50 (1) of the *Substitute Decisions Act, 1992*. 1996, c. 2, Sched. A, s. 32 (2).

Parties

- (3) The parties to the application are:
- 1. The person applying for the review.
 - 2. The health practitioner.
 - 3. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 32 (3).

Powers of Board

(4) The Board may confirm the health practitioner's finding or may determine that the person is capable with respect to the treatment, and in doing so may substitute its opinion for that of the health practitioner. 1996, c. 2, Sched. A, s. 32 (4).

Restriction on repeated applications

(5) If a health practitioner's finding that a person is incapable with respect to a treatment is confirmed on the final disposition of an application under this section, the person shall not make a new application for a review of a finding of incapacity with respect to the same or similar treatment within six months after the final disposition of the earlier application, unless the Board gives leave in advance. 1996, c. 2, Sched. A, s. 32 (5).

Same

(6) The Board may give leave for the new application to be made if it is satisfied that there has been a material change in circumstances that justifies reconsideration of the person's capacity. 1996, c. 2, Sched. A, s. 32 (6).

Decision effective while application for leave pending

(7) The Board's decision under subsection (5) remains in effect pending an application for leave under subsection (6). 2000, c. 9, s. 32.

Application for appointment of representative

33. (1) A person who is 16 years old or older and who is incapable with respect to a proposed treatment may apply to the Board for appointment of a representative to give or refuse consent on his or her behalf. 1996, c. 2, Sched. A, s. 33 (1).

Application by proposed representative

(2) A person who is 16 years old or older may apply to the Board to have himself or herself appointed as the representative of a person who is incapable with respect to a proposed treatment, to give or refuse consent on behalf of the incapable person. 1996, c. 2, Sched. A, s. 33 (2).

Exception

(3) Subsections (1) and (2) do not apply if the incapable person has a guardian of the person who has authority to give or refuse consent to the proposed treatment, or an attorney for personal care under a power of attorney conferring that authority. 1996, c. 2, Sched. A, s. 33 (3).

Parties

(4) The parties to the application are:

1. The incapable person.
2. The proposed representative named in the application.
3. Every person who is described in paragraph 4, 5, 6 or 7 of subsection 20 (1).
4. The health practitioner who proposed the treatment.
5. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 33 (4).

Appointment

(5) In an appointment under this section, the Board may authorize the representative to give or refuse consent on the incapable person's behalf,

- (a) to the proposed treatment;
- (b) to one or more treatments or kinds of treatment specified by the Board, whenever a health practitioner proposing that treatment or a treatment of that kind finds that the person is incapable with respect to it; or
- (c) to treatment of any kind, whenever a health practitioner proposing a treatment finds that the person is incapable with respect to it. 1996, c. 2, Sched. A, s. 33 (5).

Criteria for appointment

(6) The Board may make an appointment under this section if it is satisfied that the following requirements are met:

1. The incapable person does not object to the appointment.
2. The representative consents to the appointment, is at least 16 years old and is capable with respect to the treatments or the kinds of treatment for which the appointment is made.
3. The appointment is in the incapable person's best interests. 1996, c. 2, Sched. A, s. 33 (6).

Powers of Board

(7) Unless the incapable person objects, the Board may,

- (a) appoint as representative a different person than the one named in the application;
- (b) limit the duration of the appointment;
- (c) impose any other condition on the appointment;
- (d) on any person's application, remove, vary or suspend a condition imposed on the appointment or impose an additional condition on the appointment. 1996, c. 2, Sched. A, s. 33 (7).

Termination

(8) The Board may, on any person's application, terminate an appointment made under this section if,

- (a) the incapable person or the representative requests the termination of the appointment;
- (b) the representative is no longer capable with respect to the treatments or the kinds of treatment for which the appointment was made;
- (c) the appointment is no longer in the incapable person's best interests; or
- (d) the incapable person has a guardian of the person who has authority to consent to the treatments or the kinds of treatment for which the appointment was made, or an attorney for personal care under a power of attorney conferring that authority. 1996, c. 2, Sched. A, s. 33 (8).

Application with respect to place of treatment

34. (1) A person may apply to the Board for a review of a decision to consent on the person's behalf to the person's admission to a hospital, psychiatric facility or other health facility referred to in section 24 for the purpose of treatment. 1996, c. 2, Sched. A, s. 34 (1).

Exception

(2) Subsection (1) does not apply to a decision to consent on the person's behalf to the person's admission to a psychiatric facility as an informal patient, as defined in the *Mental Health Act*, if the person is at least 12 years old but less than 16 years old. 1996, c. 2, Sched. A, s. 34 (2).

Admission and treatment despite application

(3) The decision to admit the person to the hospital, psychiatric facility or health facility may take effect, and the treatment may be administered, even if the person indicates that he or she intends to apply to the Board under subsection (1) or under subsection 13 (1) of the *Mental Health Act* and even if the application to the Board has been made and has not yet been finally disposed of. 1996, c. 2, Sched. A, s. 34 (3).

Parties

(4) The parties to the application are:

1. The person applying for the review.
2. The person who consented to the admission.
3. The health practitioner who proposed the treatment.
4. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 34 (4).

Considerations

(5) In reviewing the decision to admit the person to the hospital, psychiatric facility or health facility for the purpose of treatment, the Board shall consider,

- (a) whether the hospital, psychiatric facility or health facility can provide the treatment;
- (b) whether the hospital, psychiatric facility or health facility is the least restrictive setting available in which the treatment can be administered;
- (c) whether the person's needs could more appropriately be met if the treatment were administered in another place and whether space is available for the person in the other place;
- (d) the person's views and wishes, if they can be reasonably ascertained; and
- (e) any other matter that the Board considers relevant. 1996, c. 2, Sched. A, s. 34 (5).

Order

(6) The Board may,

- (a) direct that the person be discharged from the hospital, psychiatric facility or health facility; or
- (b) confirm the decision to admit the person to the hospital, psychiatric facility or health facility. 1996, c. 2, Sched. A, s. 34 (6).

Restriction on repeated applications

(7) If the decision to admit the person is confirmed on the final disposition of an application under this section, the person shall not make a new application for a review of the decision to admit within six months after the final disposition of the earlier application, unless the Board gives leave in advance. 1996, c. 2, Sched. A, s. 34 (7).

Same

(8) The Board may give leave for the new application to be made if it is satisfied that there has been a material change in circumstances that justifies reconsideration of the decision to admit. 1996, c. 2, Sched. A, s. 34 (8).

Application under *Mental Health Act*

(9) For the purpose of subsection (7), a final disposition of an application made under section 13 of the *Mental Health Act* shall be deemed to be a final disposition of an application under this section. 1996, c. 2, Sched. A, s. 34 (9).

Application for directions

35. (1) A substitute decision-maker or a health practitioner who proposed a treatment may apply to the Board for directions if the incapable person expressed a wish with respect to the treatment, but,

- (a) the wish is not clear;
- (b) it is not clear whether the wish is applicable to the circumstances;
- (c) it is not clear whether the wish was expressed while the incapable person was capable; or
- (d) it is not clear whether the wish was expressed after the incapable person attained 16 years of age. 1996, c. 2, Sched. A, s. 35 (1); 2000, c. 9, s. 33 (1).

Notice to substitute decision-maker

(1.1) A health practitioner who intends to apply for directions shall inform the substitute decision-maker of his or her intention before doing so. 2000, c. 9, s. 33 (2).

Parties

(2) The parties to the application are:

- 1. The substitute decision-maker.
- 2. The incapable person.
- 3. The health practitioner who proposed the treatment.
- 4. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 35 (2).

Directions

(3) The Board may give directions and, in doing so, shall apply section 21. 2000, c. 9, s. 33 (3).

Application to depart from wishes

36. (1) If a substitute decision-maker is required by paragraph 1 of subsection 21 (1) to refuse consent to a treatment because of a wish expressed by the incapable person while capable and after attaining 16 years of age,

- (a) the substitute decision-maker may apply to the Board for permission to consent to the treatment despite the wish; or
- (b) the health practitioner who proposed the treatment may apply to the Board to obtain permission for the substitute decision-maker to consent to the treatment despite the wish. 2000, c. 9, s. 34 (1).

Notice to substitute decision-maker

(1.1) A health practitioner who intends to apply under clause (1) (b) shall inform the substitute decision-maker of his or her intention before doing so. 2000, c. 9, s. 34 (2).

Parties

(2) The parties to the application are:

- 1. The substitute decision-maker.
- 2. The incapable person.
- 3. The health practitioner who proposed the treatment.
- 4. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 36 (2).

Criteria for permission

(3) The Board may give the substitute decision-maker permission to consent to the treatment despite the wish if it is satisfied that the incapable person, if capable, would probably give consent because the likely result of the treatment is significantly better than would have been anticipated in comparable circumstances at the time the wish was expressed. 1996, c. 2, Sched. A, s. 36 (3).

Application to determine compliance with s. 21

37. (1) If consent to a treatment is given or refused on an incapable person's behalf by his or her substitute decision-maker, and if the health practitioner who proposed the treatment is of the opinion that the substitute decision-maker did not comply with section 21, the health practitioner may apply to the Board for a determination as to whether the substitute decision-maker complied with section 21. 1996, c. 2, Sched. A, s. 37 (1).

Parties

(2) The parties to the application are:

1. The health practitioner who proposed the treatment.
2. The incapable person.
3. The substitute decision-maker.
4. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 37 (2).

Power of Board

(3) In determining whether the substitute decision-maker complied with section 21, the Board may substitute its opinion for that of the substitute decision-maker. 1996, c. 2, Sched. A, s. 37 (3).

Directions

(4) If the Board determines that the substitute decision-maker did not comply with section 21, it may give him or her directions and, in doing so, shall apply section 21. 1996, c. 2, Sched. A, s. 37 (4).

Time for compliance

(5) The Board shall specify the time within which its directions must be complied with. 1996, c. 2, Sched. A, s. 37 (5).

Deemed not authorized

(6) If the substitute decision-maker does not comply with the Board's directions within the time specified by the Board, he or she shall be deemed not to meet the requirements of subsection 20 (2). 1996, c. 2, Sched. A, s. 37 (6).

Subsequent substitute decision-maker

(6.1) If, under subsection (6), the substitute decision-maker is deemed not to meet the requirements of subsection 20 (2), any subsequent substitute decision-maker shall, subject to subsections (6.2) and (6.3), comply with the directions given by the Board on the application within the time specified by the Board. 2000, c. 9, s. 35.

Application for directions

(6.2) If a subsequent substitute decision-maker knows of a wish expressed by the incapable person with respect to the treatment, the substitute decision-maker may, with leave of the Board, apply to the Board for directions under section 35. 2000, c. 9, s. 35.

Inconsistent directions

(6.3) Directions given by the Board under section 35 on a subsequent substitute decision-maker's application brought with leave under subsection (6.2) prevail over inconsistent directions given under subsection (4) to the extent of the inconsistency. 2000, c. 9, s. 35.

P.G.T.

(7) If the substitute decision-maker who is given directions is the Public Guardian and Trustee, he or she is required to comply with the directions, and subsection (6) does not apply to him or her. 1996, c. 2, Sched. A, s. 37 (7).

Deemed application concerning capacity

37.1 An application to the Board under section 33, 34, 35, 36 or 37 shall be deemed to include an application to the Board under section 32 with respect to the person's capacity to consent to treatment proposed by a health practitioner unless the person's capacity to consent to such treatment has been determined by the Board within the previous six months. 2000, c. 9, s. 36.

PART III ADMISSION TO CARE FACILITIES

GENERAL

Application of Part

38. This Part applies to admission to a care facility. 1996, c. 2, Sched. A, s. 38.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 38 is repealed by the Statutes of Ontario, 2007, chapter 8, subsection 207 (2) and the following substituted:

Application of Part

38. This Part applies to admission to a care facility, including admission to a secure unit of a care facility. 2007, c. 8, s. 207 (2).

See: 2007, c. 8, ss. 207 (2), 232 (2).

Definitions

39. In this Part,

“crisis” means a crisis relating to the condition or circumstances of the person who is to be admitted to the care facility; (“crise”)

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “crisis” is repealed by the Statutes of Ontario, 2007, chapter 8, subsection 207 (3) and the following substituted:

“crisis” means a situation prescribed by the regulations as a crisis; (“crise”)

See: 2007, c. 8, ss. 207 (3), 232 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 39 is amended by the Statutes of Ontario, 2007, chapter 8, subsection 207 (4) by adding the following definition:

“secure unit” means a secure unit within the meaning of the *Long-Term Care Homes Act, 2007*; (“unité de sécurité”)

See: 2007, c. 8, ss. 207 (4), 232 (2).

“substitute decision-maker” means a person who is authorized under section 41 to give or refuse consent to admission to a care facility on behalf of a person who is incapable with respect to the admission. (“mandataire spécial”) 1996, c. 2, Sched. A, s. 39.

CONSENT ON INCAPABLE PERSON’S BEHALF

Consent on incapable person’s behalf

40. (1) If a person’s consent to his or her admission to a care facility is required by law and the person is found by an evaluator to be incapable with respect to the admission, consent may be given or refused on the person’s behalf by his or her substitute decision-maker in accordance with this Act. 1996, c. 2, Sched. A, s. 40 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is repealed by the Statutes of Ontario, 2007, chapter 8, subsection 207 (5) and the following substituted:

Consent on incapable person’s behalf

(1) If a person’s consent to his or her admission to a care facility is required by law and the person is found by an evaluator to be incapable with respect to the admission,

- (a) consent may be given or refused on the person’s behalf by his or her substitute decision-maker in accordance with this Act; and
- (b) the person responsible for authorizing admissions to the care facility shall take reasonable steps to ensure that the person’s admission is not authorized unless the person’s substitute decision-maker has given consent on the person’s behalf in accordance with this Act. 2007, c. 8, s. 207 (5).

See: 2007, c. 8, ss. 207 (5), 232 (2).

Opinion of Board or court governs

(2) If a person who is found by an evaluator to be incapable with respect to his or her admission to a care facility is found to be capable with respect to the admission by the Board on an application for review of the evaluator’s finding, or by a court on an appeal of the Board’s decision, subsection (1) does not apply. 1996, c. 2, Sched. A, s. 40 (2).

Determining who may give or refuse consent

41. Section 20 applies, with necessary modifications, for the purpose of determining who is authorized to give or refuse consent to admission to a care facility on behalf of a person who is incapable with respect to the admission. 1996, c. 2, Sched. A, s. 41.

Principles for giving or refusing consent

42. (1) A person who gives or refuses consent on an incapable person’s behalf to his or her admission to a care facility shall do so in accordance with the following principles:

1. If the person knows of a wish applicable to the circumstances that the incapable person expressed while capable and after attaining 16 years of age, the person shall give or refuse consent in accordance with the wish.

2. If the person does not know of a wish applicable to the circumstances that the incapable person expressed while capable and after attaining 16 years of age, or if it is impossible to comply with the wish, the person shall act in the incapable person's best interests. 1996, c. 2, Sched. A, s. 42 (1).

Best interests

(2) In deciding what the incapable person's best interests are, the person who gives or refuses consent on his or her behalf shall take into consideration,

- (a) the values and beliefs that the person knows the incapable person held when capable and believes he or she would still act on if capable;
- (b) any wishes expressed by the incapable person with respect to admission to a care facility that are not required to be followed under paragraph 1 of subsection (1); and
- (c) the following factors:
 1. Whether admission to the care facility is likely to,
 - i. improve the quality of the incapable person's life,
 - ii. prevent the quality of the incapable person's life from deteriorating, or
 - iii. reduce the extent to which, or the rate at which, the quality of the incapable person's life is likely to deteriorate.
 2. Whether the quality of the incapable person's life is likely to improve, remain the same or deteriorate without admission to the care facility.
 3. Whether the benefit the incapable person is expected to obtain from admission to the care facility outweighs the risk of negative consequences to him or her.
 4. Whether a course of action that is less restrictive than admission to the care facility is available and is appropriate in the circumstances. 1996, c. 2, Sched. A, s. 42 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 42 is amended by the Statutes of Ontario, 2007, chapter 8, subsection 207 (6) by adding the following subsection:

Admission to secure units

(3) Subject to paragraph 1 of subsection (1), the person shall not give consent on the incapable person's behalf to his or her admission to a secure unit of a care facility, unless the admission is essential to prevent serious bodily harm to the incapable person or to others, or allows the incapable person greater freedom or enjoyment. 2007, c. 8, s. 207 (6).

See: 2007, c. 8, ss. 207 (6), 232 (2).

Information

43. (1) Before giving or refusing consent on an incapable person's behalf to his or her admission to a care facility, a substitute decision-maker is entitled to receive all the information required in order to make the decision. 1996, c. 2, Sched. A, s. 43.

Conflict

(2) Subsection (1) prevails despite anything to the contrary in the *Personal Health Information Protection Act, 2004*. 2004, c. 3, Sched. A, s. 84 (8).

Ancillary decisions

44. (1) Authority to consent on an incapable person's behalf to his or her admission to a care facility includes authority to make decisions that are necessary and ancillary to the admission. 1996, c. 2, Sched. A, s. 44 (1).

Collection and disclosure of information

(2) A decision concerning the collection and disclosure of information relating to the incapable person is a decision that is necessary and ancillary to the admission, if the information is required for the purpose of the admission and is not personal health information within the meaning of the *Personal Health Information Protection Act, 2004*. 2004, c. 3, Sched. A, s. 84 (9).

Exception

(3) Subsection (1) does not authorize the making of a decision concerning the incapable person's property. 1996, c. 2, Sched. A, s. 44 (3).

Withdrawal of consent

45. Authority to consent on an incapable person's behalf to his or her admission to a care facility includes authority to withdraw the consent at any time before the admission. 1996, c. 2, Sched. A, s. 45.

Admission must not be authorized

46. (1) This section applies if,

- (a) an evaluator finds that a person is incapable with respect to his or her admission to a care facility;
- (b) before the admission takes place, the person responsible for authorizing admissions to the care facility is informed that the person who was found to be incapable intends to apply, or has applied, to the Board for a review of the finding; and
- (c) the application to the Board is not prohibited by subsection 50 (2). 1996, c. 2, Sched. A, s. 46 (1).

Same

(2) This section also applies if,

- (a) an evaluator finds that a person is incapable with respect to his or her admission to a care facility;
- (b) before the admission takes place, the person responsible for authorizing admissions to the care facility is informed that,
 - (i) the incapable person intends to apply, or has applied, to the Board for appointment of a representative to give or refuse consent to the admission on his or her behalf, or
 - (ii) another person intends to apply, or has applied, to the Board to be appointed as the representative of the incapable person to give or refuse consent to the admission on his or her behalf; and
- (c) the application to the Board is not prohibited by subsection 51 (3). 1996, c. 2, Sched. A, s. 46 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 46 is amended by the Statutes of Ontario, 2007, chapter 8, subsection 207 (7) by adding the following subsection:

Same

(2.1) This section also applies if,

- (a) an evaluator finds that a person is incapable with respect to admission to a care facility;
- (b) consent to the incapable person's admission to a secure unit of a care facility is given on the person's behalf by his or her substitute decision-maker; and
- (c) before the admission takes place, the person responsible for authorizing admissions to the care facility is informed that the incapable person intends to apply, or has applied, to the Board for a determination as to whether the substitute decision-maker complied with section 42. 2007, c. 8, s. 207 (7).

See: 2007, c. 8, ss. 207 (7), 232 (2).

Same

(3) In the circumstances described in subsections (1) and (2), the person responsible for authorizing admissions to the care facility shall take reasonable steps to ensure that the person's admission is not authorized and that the person is not admitted,

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by the Statutes of Ontario, 2007, chapter 8, subsection 207 (8) by striking out "subsections (1) and (2)" in the portion before clause (a) and substituting "subsections (1), (2) and (2.1)". **See:** 2007, c. 8, ss. 207 (8), 232 (2).

- (a) until 48 hours have elapsed since the person responsible for authorizing admissions to the care facility was first informed of the intended application to the Board without an application being made;
- (b) until the application to the Board has been withdrawn;
- (c) until the Board has rendered a decision in the matter, if none of the parties to the application before the Board has informed the person responsible for authorizing admissions to the care facility that he or she intends to appeal the Board's decision; or
- (d) if a party to the application before the Board has informed the person responsible for authorizing admissions to the care facility that he or she intends to appeal the Board's decision,
 - (i) until the period for commencing the appeal has elapsed without an appeal being commenced, or

(ii) until the appeal of the Board's decision has been finally disposed of. 1996, c. 2, Sched. A, s. 46 (3).

Crisis

(4) This section does not apply if the person responsible for authorizing admissions to the care facility is of the opinion that the incapable person requires immediate admission to a care facility as a result of a crisis. 1996, c. 2, Sched. A, s. 46 (4).

Admission for definite stay

(5) This section does not apply to a person's admission, or the authorization of a person's admission, to a care facility for a stay of a definite number of days not exceeding 90. 1996, c. 2, Sched. A, s. 46 (5).

CRISIS ADMISSION

Authorization of admission without consent

47. (1) Despite any law to the contrary, if a person is found by an evaluator to be incapable with respect to his or her admission to a care facility, the person's admission may be authorized, and the person may be admitted, without consent, if in the opinion of the person responsible for authorizing admissions to the care facility,

- (a) the incapable person requires immediate admission to a care facility as a result of a crisis; and
- (b) it is not reasonably possible to obtain an immediate consent or refusal on the incapable person's behalf. 1996, c. 2, Sched. A, s. 47 (1).

Search

(2) When an admission to a care facility is authorized under subsection (1), the person responsible for authorizing admissions to the care facility shall ensure that reasonable efforts are made for the purpose of finding the incapable person's substitute decision-maker and obtaining from him or her a consent, or refusal of consent, to the admission. 1996, c. 2, Sched. A, s. 47 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed by the Statutes of Ontario, 2007, chapter 8, subsection 207 (9) and the following substituted:

Consent or refusal to be obtained

(2) When an admission to a care facility is authorized under subsection (1), the person responsible for authorizing admissions to the care facility shall obtain consent, or refusal of consent, from the incapable person's substitute decision-maker promptly after the person's admission. 2007, c. 8, s. 207 (9).

See: 2007, c. 8, ss. 207 (9), 232 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by the Statutes of Ontario, 2007, chapter 8, subsection 207 (10) by adding the following section:

Incapacity

Information

47.1 An evaluator shall, in the circumstances and manner specified in guidelines established by the governing body of the evaluator's profession, provide to persons found by the evaluator to be incapable with respect to admission to a care facility such information about the consequences of the findings as is specified in the guidelines. 2007, c. 8, s. 207 (10).

See: 2007, c. 8, ss. 207 (10), 232 (2).

PROTECTION FROM LIABILITY

Apparently valid consent to admission

48. (1) If the person responsible for authorizing admissions to a care facility admits, or authorizes the admission of, a person to the care facility with a consent that he or she believes, on reasonable grounds and in good faith, to be sufficient for the purpose of this Act, he or she is not liable for admitting the person, or authorizing the person's admission, without consent. 1996, c. 2, Sched. A, s. 48 (1).

Apparently valid refusal of admission

(2) If the person responsible for authorizing admissions to a care facility does not admit, or does not authorize the admission of, a person to the care facility because of a refusal that he or she believes, on reasonable grounds and in good faith, to be sufficient for the purpose of this Act, he or she is not liable for failing to admit the person or failing to authorize the person's admission. 1996, c. 2, Sched. A, s. 48 (2).

Crisis admission

(3) If the person responsible for authorizing admissions to a care facility admits, or authorizes the admission of, a person to the care facility under section 47 in good faith, he or she is not liable for admitting the person, or authorizing the person's admission, without consent. 1996, c. 2, Sched. A, s. 48 (3).

Reliance on assertion

(4) If a person who gives or refuses consent to admission to a care facility on an incapable person's behalf asserts that he or she,

- (a) is a person described in subsection 20 (1), as it applies for the purpose of section 41, or an attorney for personal care described in clause 50 (2) (b);
- (b) meets the requirement of clause 20 (2) (b) or (c), as it applies for the purpose of section 41; or
- (c) holds the opinions required under subsection 20 (4), as it applies for the purpose of section 41,

the person responsible for authorizing admissions to the care facility is entitled to rely on the accuracy of the assertion, unless it is not reasonable to do so in the circumstances. 1996, c. 2, Sched. A, s. 48 (4).

Person making decision on another's behalf

49. A person who gives or refuses consent on another person's behalf to his or her admission to a care facility, acting in good faith and in accordance with this Act, is not liable for giving or refusing consent. 1996, c. 2, Sched. A, s. 49.

APPLICATIONS TO BOARD

Application for review of finding of incapacity

50. (1) A person may apply to the Board for a review of an evaluator's finding that he or she is incapable with respect to his or her admission to a care facility. 1996, c. 2, Sched. A, s. 50 (1).

Exception

- (2) Subsection (1) does not apply to,
 - (a) a person who has a guardian of the person, if the guardian has authority to give or refuse consent to the person's admission to a care facility;
 - (b) a person who has an attorney for personal care, if the power of attorney contains a provision waiving the person's right to apply for the review and the provision is effective under subsection 50 (1) of the *Substitute Decisions Act, 1992*. 1996, c. 2, Sched. A, s. 50 (2).

Parties

(3) The parties to the application are:

- 1. The person applying for the review.
- 2. The evaluator.
- 3. The person responsible for authorizing admissions to the care facility.
- 4. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 50 (3).

Subss. 32 (4) to (7) apply

(4) Subsections 32 (4) to (7) apply, with necessary modifications, to an application under this section. 1996, c. 2, Sched. A, s. 50 (4); 2000, c. 9, s. 37.

Application for appointment of representative

51. (1) A person who is 16 years old or older and who is incapable with respect to his or her admission to a care facility may apply to the Board for appointment of a representative to give or refuse consent on his or her behalf. 1996, c. 2, Sched. A, s. 51 (1).

Application by proposed representative

(2) A person who is 16 years old or older may apply to the Board to have himself or herself appointed as the representative of a person who is incapable with respect to his or her admission to a care facility, to give or refuse consent on behalf of the incapable person. 1996, c. 2, Sched. A, s. 51 (2).

Exception

(3) Subsections (1) and (2) do not apply if the incapable person has a guardian of the person who has authority to give or refuse consent to the person's admission to a care facility, or an attorney for personal care under a power of attorney conferring that authority. 1996, c. 2, Sched. A, s. 51 (3).

Parties

(4) The parties to the application are:

1. The incapable person.
2. The proposed representative named in the application.
3. Every person who is described in paragraph 4, 5, 6 or 7 of subsection 20 (1), as it applies for the purpose of section 41.
4. The person responsible for authorizing admissions to the care facility.
5. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 51 (4).

Appointment

(5) In an appointment under this section, the Board may authorize the representative to give or refuse consent on the incapable person's behalf,

- (a) to his or her admission to the care facility; or
- (b) to his or her admission to any care facility, or to any of several care facilities specified by the Board, whenever an evaluator finds that the person is incapable with respect to the admission. 1996, c. 2, Sched. A, s. 51 (5).

Subss. 33 (6) to (8) apply

(6) Subsections 33 (6) to (8) apply, with necessary modifications, to an appointment under this section. 1996, c. 2, Sched. A, s. 51 (6).

Application for directions

52. (1) A substitute decision-maker or the person responsible for authorizing admissions to a care facility may apply to the Board for directions if the incapable person expressed a wish with respect to his or her admission to the care facility, but,

- (a) the wish is not clear;
- (b) it is not clear whether the wish is applicable to the circumstances;
- (c) it is not clear whether the wish was expressed while the incapable person was capable; or
- (d) it is not clear whether the wish was expressed after the incapable person attained 16 years of age. 1996, c. 2, Sched. A, s. 52 (1); 2000, c. 9, s. 38 (1).

Notice to substitute decision-maker

(1.1) If the person responsible for authorizing admissions to the care facility intends to apply for directions, the person shall inform the substitute decision-maker of his or her intention before doing so. 2000, c. 9, s. 38 (2).

Parties

(2) The parties to the application are:

1. The substitute decision-maker.
2. The incapable person.
3. The person responsible for authorizing admissions to the care facility.
4. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 52 (2).

Directions

(3) The Board may give directions and, in doing so, shall apply section 42. 2000, c. 9, s. 38 (3).

Application to depart from wishes

53. (1) If a substitute decision-maker is required by paragraph 1 of subsection 42 (1) to refuse consent to the incapable person's admission to a care facility because of a wish expressed by the incapable person while capable and after attaining 16 years of age,

- (a) the substitute decision-maker may apply to the Board for permission to consent to the admission despite the wish; or

- (b) the person responsible for authorizing admissions to the care facility may apply to the Board to obtain permission for the substitute decision-maker to consent to the admission despite the wish. 2000, c. 9, s. 39 (1).

Notice to substitute decision-maker

(1.1) If the person responsible for authorizing admissions to the care facility intends to apply under subsection (1), the person shall inform the substitute decision-maker of his or her intention before doing so. 2000, c. 9, s. 39 (2).

Parties

(2) The parties to the application are:

1. The substitute decision-maker.
2. The incapable person.
3. The person responsible for authorizing admissions to the care facility.
4. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 53 (2).

Criteria for permission

(3) The Board may give the substitute decision-maker permission to consent to the admission despite the wish if it is satisfied that the incapable person, if capable, would probably give consent because the likely result of the admission is significantly better than would have been anticipated in comparable circumstances at the time the wish was expressed. 1996, c. 2, Sched. A, s. 53 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by the Statutes of Ontario, 2007, chapter 8, subsection 207 (11) by adding the following section:

Application with respect to admission to secure units

53.1 (1) If consent to a person's admission to a secure unit of a care facility is given on an incapable person's behalf by a substitute decision-maker, the person may apply to the Board for a determination as to whether his or her substitute decision-maker complied with section 42. 2007, c. 8, s. 207 (11).

Applicable provisions

(2) Subsections 54 (2) to (7) apply with respect to an application under this section. 2007, c. 8, s. 207 (11).

Restriction on repeated applications

(3) If the decision to consent to the admission of the person is confirmed on the final disposition of an application under this section, the person shall not make a new application for a review of the decision to consent within six months after the final disposition of the earlier application, unless the Board gives leave in advance. 2007, c. 8, s. 207 (11).

Restriction where other applications

(4) A person shall not make an application under this section for a review of a decision to consent to the admission within six months after any of the following, unless the Board gives leave in advance:

1. A final disposition of an application under section 52 if the result of the final disposition was that directions were given with respect to a wish, applicable to the circumstances, expressed by the person while capable and after attaining 16 years of age.
2. A final disposition of an application under section 53 if the result of the final disposition was that permission was given to the substitute decision-maker to consent to the admission despite a wish expressed by the person while capable and after attaining 16 years of age.
3. A final disposition of an application under section 54 if the result of the final disposition was that directions were given with respect to the consent to the admission. 2007, c. 8, s. 207 (11).

Same

(5) The Board may give leave for the new application to be made if it is satisfied that there has been a material change in circumstances that justifies reconsideration of the decision to consent to the admission. 2007, c. 8, s. 207 (11).

See: 2007, c. 8, ss. 207 (11), 232 (2).

Application to determine compliance with s. 42

54. (1) If consent to admission to a care facility is given or refused on an incapable person's behalf by his or her substitute decision-maker, and if the person responsible for authorizing admissions to the care facility is of the opinion that the substitute decision-maker did not comply with section 42, the person responsible for authorizing admissions to the care

facility may apply to the Board for a determination as to whether the substitute decision-maker complied with section 42. 1996, c. 2, Sched. A, s. 54 (1).

Parties

(2) The parties to the application are:

1. The person responsible for authorizing admissions to the care facility.
2. The incapable person.
3. The substitute decision-maker.
4. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 54 (2).

Power of Board

(3) In determining whether the substitute decision-maker complied with section 42, the Board may substitute its opinion for that of the substitute decision-maker. 1996, c. 2, Sched. A, s. 54 (3).

Directions

(4) If the Board determines that the substitute decision-maker did not comply with section 42, it may give him or her directions and, in doing so, shall apply section 42. 1996, c. 2, Sched. A, s. 54 (4).

Time for compliance

(5) The Board shall specify the time within which its directions must be complied with. 1996, c. 2, Sched. A, s. 54 (5).

Deemed not authorized

(6) If the substitute decision-maker does not comply with the Board's directions within the time specified by the Board, he or she shall be deemed not to meet the requirements of subsection 20 (2), as it applies for the purpose of section 41. 1996, c. 2, Sched. A, s. 54 (6).

Subsequent substitute decision-maker

(6.1) If, under subsection (6), the substitute decision-maker is deemed not to meet the requirements of subsection 20 (2), any subsequent substitute decision-maker shall, subject to subsections (6.2) and (6.3), comply with the directions given by the Board on the application within the time specified by the Board. 2000, c. 9, s. 40.

Application for directions

(6.2) If a subsequent substitute decision-maker knows of a wish expressed by the incapable person with respect to the admission to a care facility, the substitute decision-maker may, with leave of the Board, apply to the Board for directions under section 52. 2000, c. 9, s. 40.

Inconsistent directions

(6.3) Directions given by the Board under section 52 on a subsequent substitute decision-maker's application brought with leave under subsection (6.2) prevail over inconsistent directions given under subsection (4) to the extent of the inconsistency. 2000, c. 9, s. 40.

P.G.T.

(7) If the substitute decision-maker who is given directions is the Public Guardian and Trustee, he or she is required to comply with the directions, and subsection (6) does not apply to him or her. 1996, c. 2, Sched. A, s. 54 (7).

Deemed application concerning capacity

54.1 An application to the Board under section 51, 52, 53 or 54 shall be deemed to include an application to the Board under section 50 with respect to the person's capacity to consent to his or her admission to a care facility unless the person's capacity to consent to such admission has been determined by the Board within the previous six months. 2000, c. 9, s. 41.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 54.1 is amended by the Statutes of Ontario, 2007, chapter 8, subsection 207 (12) by striking out "53 or 54" and substituting "53, 53.1 or 54". See: 2007, c. 8, ss. 207 (12), 232 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, Part III is amended by the Statutes of Ontario, 2007, chapter 8, subsection 207 (13) by adding the following section:

Application to transfer to a secure unit

54.2 (1) This Part applies to the transfer of a resident of a long-term care home to a secure unit in the home as though the resident were being admitted to the secure unit, with the following modifications set out in paragraphs 1 and 2 and any other necessary modifications:

1. References to the person responsible for authorizing admissions to a care facility shall be deemed to be references to the licensee of the home.
2. References to admission to a care facility shall be deemed to be references to transfer to the secure unit. 2007, c. 8, s. 207 (13).

Definition of certain terms

(2) In this section,

“licensee”, “long-term care home” and “resident” have the same meaning as in the *Long-Term Care Homes Act, 2007*. 2007, c. 8, s. 207 (13).

See: 2007, c. 8, ss. 207 (13), 232 (2).

**PART IV
PERSONAL ASSISTANCE SERVICES**

GENERAL

Application of Part

55. This Part applies to personal assistance services. 1996, c. 2, Sched. A, s. 55.

Meaning of “substitute decision-maker”

56. In this Part,

“substitute decision-maker” means a person who is authorized under section 58 to make a decision concerning a personal assistance service on behalf of a recipient who is incapable with respect to the service. 1996, c. 2, Sched. A, s. 56.

DECISION ON INCAPABLE RECIPIENT’S BEHALF

Decision on incapable recipient’s behalf

57. (1) If a recipient is found by an evaluator to be incapable with respect to a personal assistance service, a decision concerning the service may be made on the recipient’s behalf by his or her substitute decision-maker in accordance with this Act. 1996, c. 2, Sched. A, s. 57 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is repealed by the Statutes of Ontario, 2007, chapter 8, subsection 207 (14) and the following substituted:

Decision on incapable recipient’s behalf

- (1) If a recipient is found by an evaluator to be incapable with respect to a personal assistance service,
 - (a) a decision concerning the service may be made on the recipient’s behalf by his or her substitute decision-maker in accordance with this Act; and
 - (b) the person who provides the service shall not rely on the consent of the substitute decision-maker unless the person has taken reasonable steps to ensure that the substitute decision-maker has given consent on the recipient’s behalf in accordance with this Act. 2007, c. 8, s. 207 (14).

See: 2007, c. 8, ss. 207 (14), 232 (2).

Opinion of Board or court governs

(2) If a recipient who is found by an evaluator to be incapable with respect to a personal assistance service is found to be capable with respect to the service by the Board on an application for review of the evaluator’s finding, or by a court on an appeal of the Board’s decision, subsection (1) does not apply. 1996, c. 2, Sched. A, s. 57 (2).

Determining who may make decision

58. For the purpose of determining who is authorized to make a decision concerning a personal assistance service on behalf of a recipient who is incapable with respect to the service,

- (a) section 20, except subsections 20 (5) and (6), applies with necessary modifications;
- (b) if no person described in subsection 20 (1) meets the requirements of subsection 20 (2), the Public Guardian and Trustee may make the decision concerning the personal assistance service; and
- (c) if two or more persons who are described in the same paragraph of subsection 20 (1) and who meet the requirements of subsection 20 (2) disagree about the decision to be made concerning the personal assistance service, and if their

claims rank ahead of all others, the Public Guardian and Trustee may make the decision in their stead. 1996, c. 2, Sched. A, s. 58.

Principles for making decision

59. (1) A person who makes a decision on an incapable recipient's behalf concerning a personal assistance service shall do so in accordance with the following principles:

1. If the person knows of a wish applicable to the circumstances that the recipient expressed while capable and after attaining 16 years of age, the person shall make the decision in accordance with the wish.
2. If the person does not know of a wish applicable to the circumstances that the recipient expressed while capable and after attaining 16 years of age, or if it is impossible to comply with the wish, the person shall act in the recipient's best interests. 1996, c. 2, Sched. A, s. 59 (1).

Best interests

- (2) In deciding what the recipient's best interests are, the person shall take into consideration,
 - (a) the values and beliefs that the person knows the recipient held when capable and believes he or she would still act on if capable;
 - (b) any wishes expressed by the recipient with respect to the personal assistance service that are not required to be followed under paragraph 1 of subsection (1); and
 - (c) the following factors:
 1. Whether the personal assistance service is likely to,
 - i. improve the quality of the recipient's life,
 - ii. prevent the quality of the recipient's life from deteriorating, or
 - iii. reduce the extent to which, or the rate at which, the quality of the recipient's life is likely to deteriorate.
 2. Whether the quality of the recipient's life is likely to improve, remain the same or deteriorate without the personal assistance service.
 3. Whether the benefit the recipient is expected to obtain from the personal assistance service outweighs the risk of harm to him or her.
 4. Whether a less restrictive or less intrusive personal assistance service would be as beneficial as the personal assistance service that is the subject of the decision.
 5. Whether the personal assistance service fosters the recipient's independence. 1996, c. 2, Sched. A, s. 59 (2).

Confinement, monitoring devices, restraint

(3) Subject to paragraph 1 of subsection (1), the person shall not give consent on the recipient's behalf to the use of confinement, monitoring devices or means of restraint, unless the practice is essential to prevent serious bodily harm to the recipient or to others, or allows the recipient greater freedom or enjoyment. 1996, c. 2, Sched. A, s. 59 (3).

Participation

(4) The person shall encourage the recipient to participate, to the best of his or her abilities, in the person's decision concerning the personal assistance service. 1996, c. 2, Sched. A, s. 59 (4).

Information

60. (1) Before making a decision on an incapable recipient's behalf concerning a personal assistance service, a substitute decision-maker is entitled to receive all the information required in order to make the decision. 1996, c. 2, Sched. A, s. 60.

Conflict

(2) Subsection (1) prevails despite anything to the contrary in the *Personal Health Information Protection Act, 2004*. 2004, c. 3, Sched. A, s. 84 (10).

Change of decision

61. Authority to make a decision on an incapable recipient's behalf concerning a personal assistance service includes authority to change the decision at any time. 1996, c. 2, Sched. A, s. 61.

Included consent

62. Unless it is not reasonable to do so in the circumstances, a person who provides a personal assistance service to a recipient is entitled to presume that consent to a personal assistance service includes consent to variations or adjustments in the service, if the nature and risks of the changed service are not significantly different from the nature and risks of the original service. 1996, c. 2, Sched. A, s. 62.

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by the Statutes of Ontario, 2007, chapter 8, subsection 207 (15) by adding the following section:

Information

62.1 An evaluator shall, in the circumstances and manner specified in guidelines established by the governing body of the evaluator's profession, provide to persons found by the evaluator to be incapable with respect to a personal assistance service such information about the consequences of the findings as is specified in the guidelines. 2007, c. 8, s. 207 (15).

See: 2007, c. 8, ss. 207 (15), 232 (2).

PROTECTION FROM LIABILITY

Protection from liability

Personal assistance service provided

63. (1) If a person provides a personal assistance service to a recipient in accordance with a decision made on the recipient's behalf that the person believes, on reasonable grounds and in good faith, to be sufficient for the purpose of this Act, the person is not liable for providing the personal assistance service without consent. 1996, c. 2, Sched. A, s. 63 (1).

Personal assistance service not provided

(2) If a person does not provide a personal assistance service to a recipient because of a decision made on the recipient's behalf that the person believes, on reasonable grounds and in good faith, to be sufficient for the purpose of this Act, the person is not liable for failing to provide the personal assistance service. 1996, c. 2, Sched. A, s. 63 (2).

Reliance on assertion

(3) If a person who makes a decision on an incapable recipient's behalf concerning a personal assistance service asserts that he or she,

- (a) is a person described in subsection 20 (1), as it applies for the purpose of section 58;
- (b) meets the requirement of clause 20 (2) (b) or (c), as it applies for the purpose of section 58; or
- (c) holds the opinions required under subsection 20 (4), as it applies for the purpose of section 58,

a person who provides a personal assistance service to the recipient is entitled to rely on the accuracy of the assertion, unless it is not reasonable to do so in the circumstances. 1996, c. 2, Sched. A, s. 63 (3).

Person making decision on recipient's behalf

64. A person who makes a decision on a recipient's behalf concerning a personal assistance service, acting in good faith and in accordance with this Act, is not liable for making the decision. 1996, c. 2, Sched. A, s. 64.

APPLICATIONS TO BOARD

Application for review of finding of incapacity

65. (1) A recipient may apply to the Board for a review of an evaluator's finding that he or she is incapable with respect to a personal assistance service. 1996, c. 2, Sched. A, s. 65 (1).

Exception

- (2) Subsection (1) does not apply to,
 - (a) a recipient who has a guardian of the person, if the guardian has authority to make a decision concerning the personal assistance service;
 - (b) a recipient who has an attorney for personal care, if the power of attorney contains a provision waiving the recipient's right to apply for the review and the provision is effective under subsection 50 (1) of the *Substitute Decisions Act*, 1992. 1996, c. 2, Sched. A, s. 65 (2).

Parties

- (3) The parties to the application are:
 - 1. The recipient applying for the review.

2. The evaluator.
3. The member of the service provider's staff who is responsible for the personal assistance service.
4. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 65 (3).

Subss. 32 (4) to (7) apply

(4) Subsections 32 (4) to (7) apply, with necessary modifications, to an application under this section. 1996, c. 2, Sched. A, s. 65 (4); 2000, c. 9, s. 42.

Application for appointment of representative

66. (1) A recipient who is 16 years old or older and who is incapable with respect to a personal assistance service may apply to the Board for appointment of a representative to make a decision on his or her behalf concerning the service. 1996, c. 2, Sched. A, s. 66 (1).

Application by proposed representative

(2) A person who is 16 years old or older may apply to the Board to have himself or herself appointed as the representative of a recipient who is incapable with respect to a personal assistance service, to make a decision on behalf of the recipient concerning the service. 1996, c. 2, Sched. A, s. 66 (2).

Exception

(3) Subsections (1) and (2) do not apply if the recipient has a guardian of the person who has authority to make decisions concerning the personal assistance service, or an attorney for personal care under a power of attorney conferring that authority. 1996, c. 2, Sched. A, s. 66 (3).

Parties

- (4) The parties to the application are:
1. The recipient.
 2. The proposed representative named in the application.
 3. Every person who is described in paragraph 4, 5, 6 or 7 of subsection 20 (1), as it applies for the purpose of section 58.
 4. The member of the service provider's staff who is responsible for the personal assistance service.
 5. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 66 (4).

Appointment

(5) In an appointment under this section, the Board may authorize the representative to make a decision on the recipient's behalf,

- (a) concerning the personal assistance service; or
- (b) concerning any personal assistance service, or any of several personal assistance services or kinds of personal assistance services specified by the Board, whenever a decision is sought concerning that service or a service of that kind and an evaluator finds that the recipient is incapable with respect to it. 1996, c. 2, Sched. A, s. 66 (5).

Subss. 33 (6) to (8) apply

(6) Subsections 33 (6) to (8) apply, with necessary modifications, to an appointment under this section. 1996, c. 2, Sched. A, s. 66 (6).

Application for directions

67. (1) A substitute decision-maker or the member of a service provider's staff who is responsible for the personal assistance service may apply to the Board for directions if the incapable recipient expressed a wish with respect to the personal assistance service, but,

- (a) the wish is not clear;
- (b) it is not clear whether the wish is applicable to the circumstances;
- (c) it is not clear whether the wish was expressed while the recipient was capable; or
- (d) it is not clear whether the wish was expressed after the recipient attained 16 years of age. 1996, c. 2, Sched. A, s. 67 (1); 2000, c. 9, s. 43 (1).

Notice to substitute decision-maker

(1.1) If the member of the service provider's staff responsible for the personal assistance service intends to apply under subsection (1), the member shall inform the substitute decision-maker of his or her intention before doing so. 2000, c. 9, s. 43 (2).

Parties

(2) The parties to the application are:

1. The substitute decision-maker.
2. The recipient.
3. The member of the service provider's staff who is responsible for the personal assistance service.
4. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 67 (2).

Directions

(3) The Board may give directions and, in doing so, shall apply section 59. 2000, c. 9, s. 43 (3).

Application to depart from wishes

68. (1) If a substitute decision-maker is required by paragraph 1 of subsection 59 (1) to refuse consent to a personal assistance service because of a wish expressed by the incapable recipient while capable and after attaining 16 years of age,

- (a) the substitute decision-maker may apply to the Board for permission to consent to the personal assistance service despite the wish; or
- (b) the member of the service provider's staff who is responsible for the personal assistance service may apply to the Board to obtain permission for the substitute decision-maker to consent to the personal assistance service despite the wish. 2000, c. 9, s. 44 (1).

Notice to substitute decision-maker

(1.1) If the member of the service provider's staff who is responsible for the personal assistance service intends to apply under subsection (1), the member shall inform the substitute decision-maker of his or her intention before doing so. 2000, c. 9, s. 44 (2).

Parties

(2) The parties to the application are:

1. The substitute decision-maker.
2. The recipient.
3. The member of the service provider's staff who is responsible for the personal assistance service.
4. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 68 (2).

Criteria for permission

(3) The Board may give the substitute decision-maker permission to consent to the personal assistance service despite the wish if it is satisfied that the recipient, if capable, would probably give consent because the likely result of the personal assistance service is significantly better than would have been anticipated in comparable circumstances at the time the wish was expressed. 1996, c. 2, Sched. A, s. 68 (3).

Application to determine compliance with s. 59

69. (1) If a decision concerning a personal assistance service is made on an incapable recipient's behalf by his or her substitute decision-maker and, if the member of the service provider's staff who is responsible for the personal assistance service is of the opinion that the substitute decision-maker did not comply with section 59, the member of the service provider's staff who is responsible for the personal assistance service may apply to the Board for a determination as to whether the substitute decision-maker complied with section 59. 1996, c. 2, Sched. A, s. 69 (1).

Parties

(2) The parties to the application are:

1. The member of the service provider's staff who is responsible for the personal assistance service.
2. The recipient.
3. The substitute decision-maker.

4. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 69 (2).

Power of Board

(3) In determining whether the substitute decision-maker complied with section 59, the Board may substitute its opinion for that of the substitute decision-maker. 1996, c. 2, Sched. A, s. 69 (3).

Directions

(4) If the Board determines that the substitute decision-maker did not comply with section 59, it may give him or her directions and, in doing so, shall apply section 59. 1996, c. 2, Sched. A, s. 69 (4).

Time for compliance

(5) The Board shall specify the time within which its directions must be complied with. 1996, c. 2, Sched. A, s. 69 (5).

Deemed not authorized

(6) If the substitute decision-maker does not comply with the Board's directions within the time specified by the Board, he or she shall be deemed not to meet the requirements of subsection 20 (2), as it applies for the purpose of section 58. 1996, c. 2, Sched. A, s. 69 (6).

Subsequent substitute decision-maker

(6.1) If, under subsection (6), the substitute decision-maker is deemed not to meet the requirements of subsection 20 (2), any subsequent substitute decision-maker shall, subject to subsections (6.2) and (6.3), comply with the directions given by the Board on the application within the time specified by the Board. 2000, c. 9, s. 45.

Application for directions

(6.2) If a subsequent substitute decision-maker knows of a wish expressed by the incapable person with respect to the personal assistance service, the substitute decision-maker may, with leave of the Board, apply to the Board for directions under section 67. 2000, c. 9, s. 45.

Inconsistent directions

(6.3) Directions given by the Board under section 67 on a subsequent substitute decision-maker's application brought with leave under subsection (6.2) prevail over inconsistent directions given under subsection (4) to the extent of the inconsistency. 2000, c. 9, s. 45.

P.G.T.

(7) If the substitute decision-maker who is given directions is the Public Guardian and Trustee, he or she is required to comply with the directions, and subsection (6) does not apply to him or her. 1996, c. 2, Sched. A, s. 69 (7).

Deemed application concerning capacity

69.1 An application to the Board under section 66, 67, 68 or 69 shall be deemed to include an application to the Board under section 65 with respect to the person's capacity to consent to a personal assistance service unless the person's capacity to consent to such service has been determined by the Board within the previous six months. 2000, c. 9, s. 46.

PART V CONSENT AND CAPACITY BOARD

Consent and Capacity Board

70. (1) The board known as the Consent and Capacity Review Board in English and as Commission de révision du consentement et de la capacité in French is continued under the name Consent and Capacity Board in English and Commission du consentement et de la capacité in French. 1996, c. 2, Sched. A, s. 70 (1).

Composition

(2) The members of the Board shall be appointed by the Lieutenant Governor in Council. 1996, c. 2, Sched. A, s. 70 (2).

(3) REPEALED: 2006, c. 34, s. 34.

Remuneration and expenses

(4) The members of the Board shall be paid the remuneration fixed by the Lieutenant Governor in Council and the reasonable expenses incurred in the course of their duties under this Act. 1996, c. 2, Sched. A, s. 70 (4).

Limit on jurisdiction

70.1 (1) The Board shall not inquire into or make a decision concerning the constitutional validity of a provision of an Act or a regulation. 2006, c. 19, Sched. L, s. 2.

Same

(2) Subsection (1) shall be deemed always to have applied to the Board, but its enactment does not affect any proceeding that was finally determined before the date on which this section came into force. 2006, c. 19, Sched. L, s. 2.

Chair and vice-chairs

71. (1) The Lieutenant Governor in Council shall designate one of the members of the Board as chair and one or more others as vice-chairs. 1996, c. 2, Sched. A, s. 71 (1).

Role of chair

(2) The chair is the chief executive officer of the Board. 1996, c. 2, Sched. A, s. 71 (2).

Power to specify qualifications

(3) The chair may specify qualifications, for the purpose of clause 73 (2) (d) or (2.1) (b), that must be met by members of the Board before they may be assigned to sit alone to deal with particular applications. 1996, c. 2, Sched. A, s. 71 (3); 2006, c. 26, s. 14 (1).

Role of vice-chair

(4) If the chair is unable to act as such for any reason, the vice-chair (if there are two or more vice-chairs, the one whom the chair designates to replace him or her or, in the absence of a designation, the one who was appointed to the Board first) shall act in the chair's place. 1996, c. 2, Sched. A, s. 71 (4).

Same

(5) A vice-chair also has the powers and duties that the chair delegates to him or her in writing. 1996, c. 2, Sched. A, s. 71 (5).

Immunity

71.1 No proceeding for damages shall be commenced against the Board, a member, employee or agent of the Board or anyone acting under the authority of the chair of the Board for any act done in good faith in the performance or intended performance of the person's duty or for any alleged neglect or default in the performance in good faith of the person's duty. 2000, c. 9, s. 47.

Staff

72. (1) Such employees as are necessary for the proper conduct of the Board's work may be appointed under Part III of the *Public Service of Ontario Act, 2006*. 1996, c. 2, Sched. A, s. 72 (1); 2006, c. 35, Sched. C, s. 52.

Government services and facilities

(2) The Board shall, if appropriate, use the services and facilities of a ministry or agency of the Government of Ontario. 1996, c. 2, Sched. A, s. 72 (2).

Assignment of Board members to deal with applications

73. (1) The chair shall assign the members of the Board to sit alone or in panels of three or five members to deal with particular applications. 1996, c. 2, Sched. A, s. 73 (1).

Qualifications of member sitting alone

- (2) A member of the Board may be assigned to sit alone to deal with an application only if,
- (a) throughout the two-year period immediately preceding the assignment, he or she has been a member of the Board or of the review board established by section 37 of the *Mental Health Act*, as it read before the day subsection 20 (23) of the *Consent and Capacity Statute Law Amendment Act, 1992* came into force;
 - (b) he or she is a person licensed under the *Law Society Act* to practise law in Ontario as a barrister and solicitor and, throughout the 10-year period immediately preceding the assignment, he or she has been,
 - (i) a person licensed under the *Law Society Act* to practise law in Ontario as a barrister and solicitor, or
 - (ii) a member of the Law Society of Upper Canada and, subsequently, a person licensed under the *Law Society Act* to practise law in Ontario as a barrister and solicitor;

- (c) in the case of an application for a review of a finding of incapacity, he or she has experience that, in the opinion of the chair, is relevant to adjudicating capacity; and
- (d) he or she meets all of the other qualifications specified by the chair under subsection 71 (3). 1996, c. 2, Sched. A, s. 73 (2); 2006, c. 21, Sched. C, s. 111 (1).

Same

(2.1) Despite subsection (2), in the case of an application referred to the Board under the *Mandatory Blood Testing Act, 2006*, a member of the Board may be assigned to sit alone to deal with the application if,

- (a) he or she has expertise, in the opinion of the chair, in blood-borne pathogens; and
- (b) he or she meets all of the other qualifications specified by the chair under subsection 71 (3). 2006, c. 26, s. 14 (2).

Panel proceedings

- (3) If a panel is assigned to deal with an application,
 - (a) the chair shall designate one member of the panel to preside over the hearing to be conducted by the panel in relation to the application; and
 - (b) a majority of the members of the panel constitutes a quorum. 1996, c. 2, Sched. A, s. 73 (3).

Decision of Board

(4) If a member of the Board is assigned to sit alone to deal with an application, the decision of the member is the decision of the Board, and if a panel is assigned to deal with an application, the decision of a majority of the members of the panel is the decision of the Board. 1996, c. 2, Sched. A, s. 73 (4).

Disqualification

74. (1) A member of the Board shall not take part in the hearing of a matter that concerns a person who is or was the member's patient or client. 1996, c. 2, Sched. A, s. 74 (1).

Same

(2) A member of the Board who is an officer or employee of a hospital or other facility or has a direct financial interest in such a facility shall not take part in the hearing of a matter that concerns a person who is a patient of the facility or who resides in the facility. 1996, c. 2, Sched. A, s. 74 (2).

Application hearings

Board to fix time and place of hearing

75. (1) When the Board receives an application, it shall promptly fix a time and place for a hearing. 1996, c. 2, Sched. A, s. 75 (1).

Hearing to begin within seven days

(2) The hearing shall begin within seven days after the day the Board receives the application, unless the parties agree to a postponement. 1996, c. 2, Sched. A, s. 75 (2).

Decision

(3) The Board shall render its decision and provide a copy of the decision to each party or the person who represented the party within one day after the day the hearing ends. 2006, c. 21, Sched. C, s. 111 (2).

Reasons

(4) If, within 30 days after the day the hearing ends, the Board receives a request from any of the parties for reasons for its decision, the Board shall, within two business days after the day the request is received,

- (a) issue written reasons for its decision; and
- (b) provide a copy of the reasons to each person who received a copy of the decision under subsection (3). 2006, c. 21, Sched. C, s. 111 (2).

Notice of right to request reasons

(5) The Board shall advise all parties to the application that each party has a right to request reasons for the Board's decision. 1996, c. 2, Sched. A, s. 75 (5).

Method of sending decision and reasons

(6) Despite subsection 18 (1) of the *Statutory Powers Procedure Act*, the Board shall send the copy of the decision and, if reasons are required to be issued under subsection (4), the copy of the reasons,

- (a) by electronic transmission;
- (b) by telephone transmission of a facsimile; or
- (c) by some other method that allows proof of receipt, in accordance with the tribunal's rules made under section 25.1 of the *Statutory Powers Procedure Act*. 1996, c. 2, Sched. A, s. 75 (6).

Deemed day of receipt

(7) Despite subsection 18 (3) of the *Statutory Powers Procedure Act*, if the copy is sent by electronic transmission or by telephone transmission of a facsimile, it shall be deemed to be received on the day that it was sent, unless that day is a holiday, in which case the copy shall be deemed to be received on the next day that is not a holiday. 1996, c. 2, Sched. A, s. 75 (7).

Exception

(8) If a party that acts in good faith does not, through absence, accident, illness or other cause beyond the party's control, receive the copy until a date that is later than the deemed day of receipt, the actual date of receipt governs. 1996, c. 2, Sched. A, s. 75 (8).

Meaning of "business day"

- (9) In subsection (4),

"business day" means any day other than Saturday or a holiday. 1996, c. 2, Sched. A, s. 75 (9).

Examination of documents

76. (1) Before the hearing, the parties shall be given an opportunity to examine and copy any documentary evidence that will be produced and any report whose contents will be given in evidence. 1996, c. 2, Sched. A, s. 76 (1).

Health record

(2) The party who is the subject of the treatment, the admission or the personal assistance service, as the case may be, and the person authorized under the *Law Society Act* to represent him or her are entitled to examine and to copy, at their own expense, any medical or other health record prepared in respect of the party, subject to subsections 35 (6) and (7) of the *Mental Health Act* (withholding record of personal health information), subsections 33 (2), (3) and (4) of the *Long-Term Care Act, 1994* (withholding record of personal health information) and subsections 183 (2) to (6) of the *Child and Family Services Act* (withholding record of mental disorder). 2004, c. 3, Sched. A, s. 84 (11); 2006, c. 21, Sched. C, s. 111 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by the Statutes of Ontario, 2007, chapter 8, subsection 207 (16) by striking out "*Long-Term Care Act, 1994*" and substituting "*Home Care and Community Services Act, 1994*". See: 2007, c. 8, ss. 207 (16), 232 (2).

Communication re subject-matter of hearing

77. (1) The member or members of the Board conducting a hearing shall not communicate about the subject-matter of the hearing directly or indirectly with any person, unless all the parties and the persons representing the parties under the authority of the *Law Society Act* receive notice and have an opportunity to participate. 2006, c. 21, Sched. C, s. 111 (4).

Exception

(2) However, the member or members of the Board conducting the hearing may seek advice from an adviser independent of the parties, and in that case the nature of the advice shall be communicated to all the parties and the persons representing the parties under the authority of the *Law Society Act* so that they may make submissions as to the law. 1996, c. 2, Sched. A, s. 77 (2); 2006, c. 21, Sched. C, s. 111 (5).

Only members at hearing to participate in decision

78. No member of the Board shall participate in a decision unless he or she was present throughout the hearing and heard the parties' evidence and argument. 1996, c. 2, Sched. A, s. 78.

Release of evidence

79. (1) Within a reasonable time after the final disposition of the proceeding, documents and things put in evidence at the hearing shall, on request, be released to the person who produced them. 1996, c. 2, Sched. A, s. 79 (1).

Return of original record

(2) If an original clinical record respecting a person's care or treatment was put in evidence, it shall be returned to the place from which it was obtained as soon as possible after the final disposition of the proceeding. 1996, c. 2, Sched. A, s. 79 (2).

Appeal

80. (1) A party to a proceeding before the Board may appeal the Board's decision to the Superior Court of Justice on a question of law or fact or both. 1996, c. 2, Sched. A, s. 80 (1); 2000, c. 9, s. 48.

Time for filing notice of appeal

(2) The appellant shall serve his or her notice of appeal on the other parties and shall file it with the court, with proof of service, within seven days after he or she receives the Board's decision. 1996, c. 2, Sched. A, s. 80 (2).

Notice to Board

(3) The appellant shall give a copy of the notice of appeal to the Board. 1996, c. 2, Sched. A, s. 80 (3).

Record

(4) On receipt of the copy of the notice of appeal, the Board shall promptly serve the parties with the record of the proceeding before the Board, including a transcript of the oral evidence given at the hearing, and shall promptly file the record and transcript, with proof of service, with the court. 1996, c. 2, Sched. A, s. 80 (4).

Time for filing appellant's factum

(5) Within 14 days after being served with the record and transcript, the appellant shall serve his or her factum on the other parties and shall file it, with proof of service, with the court. 1996, c. 2, Sched. A, s. 80 (5).

Time for filing respondent's factum

(6) Within 14 days after being served with the appellant's factum, the respondent shall serve his or her factum on the other parties and shall file it, with proof of service, with the court. 1996, c. 2, Sched. A, s. 80 (6).

Extension of time

(7) The court may extend the time for filing the notice of appeal, the appellant's factum or the respondent's factum, even after the time has expired. 1996, c. 2, Sched. A, s. 80 (7).

Early date for appeal

(8) The court shall fix for the hearing of the appeal the earliest date that is compatible with its just disposition. 1996, c. 2, Sched. A, s. 80 (8).

Appeal on the record, exception

(9) The court shall hear the appeal on the record, including the transcript, but may receive new or additional evidence as it considers just. 1996, c. 2, Sched. A, s. 80 (9).

Powers of court on appeal

(10) On the appeal, the court may,

- (a) exercise all the powers of the Board;
- (b) substitute its opinion for that of a health practitioner, an evaluator, a substitute decision-maker or the Board;
- (c) refer the matter back to the Board, with directions, for rehearing in whole or in part. 1996, c. 2, Sched. A, s. 80 (10).

Counsel for incapable person

81. (1) If a person who is or may be incapable with respect to a treatment, admission to a care facility or a personal assistance service is a party to a proceeding before the Board and does not have legal representation,

- (a) the Board may direct the Public Guardian and Trustee or the Children's Lawyer to arrange for legal representation to be provided for the person; and
- (b) the person shall be deemed to have capacity to retain and instruct counsel. 1996, c. 2, Sched. A, s. 81 (1).

Responsibility for legal fees

(2) If legal representation is provided for a person in accordance with clause (1) (a) and no certificate is issued under the *Legal Aid Services Act, 1998* in connection with the proceeding, the person is responsible for the legal fees. 1996, c. 2, Sched. A, s. 81 (2); 1998, c. 26, s. 104.

Child in secure treatment program

(3) If a child who has been admitted to a secure treatment program under section 124 of the *Child and Family Services Act* is a party to a proceeding before the Board, the Children's Lawyer shall provide legal representation for the child unless the Children's Lawyer is satisfied that another person will provide legal representation for the child. 1996, c. 2, Sched. A, s. 81 (3).

PART VI MISCELLANEOUS

Offence: false assertion

82. (1) No person who gives or refuses consent to a treatment on an incapable person's behalf shall make an assertion referred to in subsection 29 (6), knowing that it is untrue. 1996, c. 2, Sched. A, s. 82 (1).

Same

(2) No person who gives or refuses consent to admission to a care facility on an incapable person's behalf shall make an assertion referred to in subsection 48 (4), knowing that it is untrue. 1996, c. 2, Sched. A, s. 82 (2).

Same

(3) No person who makes a decision concerning a personal assistance service on an incapable recipient's behalf shall make an assertion referred to in subsection 63 (3), knowing that it is untrue. 1996, c. 2, Sched. A, s. 82 (3).

Penalty

(4) A person who contravenes subsection (1), (2) or (3) is guilty of an offence and is liable, on conviction, to a fine not exceeding \$10,000. 1996, c. 2, Sched. A, s. 82 (4).

Offence: misrepresentation of wishes

83. (1) No person shall knowingly misrepresent wishes someone has expressed with respect to treatment, admission to a care facility or a personal assistance service. 1996, c. 2, Sched. A, s. 83 (1).

Penalty

(2) A person who contravenes subsection (1) is guilty of an offence and is liable, on conviction, to a fine not exceeding \$10,000. 1996, c. 2, Sched. A, s. 83 (2).

Offence: decision contrary to wishes

84. (1) A person who knowingly contravenes paragraph 1 of subsection 21 (1), paragraph 1 of subsection 42 (1) or paragraph 1 of subsection 59 (1) is guilty of an offence and is liable, on conviction, to a fine not exceeding \$10,000. 1996, c. 2, Sched. A, s. 84 (1).

Exception

(2) Subsection (1) does not apply if the person acts in accordance with permission given under section 36, 53 or 68 or in accordance with directions given under section 35, 37, 52, 54, 67 or 69. 1996, c. 2, Sched. A, s. 84 (2).

Regulations

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

- (a) prescribing facilities as care facilities for the purpose of clause (d) of the definition of "care facility" in subsection 2 (1) and providing transitional rules for the application of the Act to such facilities;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (a) is amended by the Statutes of Ontario, 2007, chapter 8, subsection 207 (17) by striking out "clause (d)" and substituting "clause (b)". See: 2007, c. 8, ss. 207 (17), 232 (2).

- (b) for the purpose of the definition of "evaluator" in subsection 2 (1), prescribing categories of persons as evaluators and prescribing the circumstances in which those persons or persons described in clause (a), (l), (m), (o), (p) or (q) of the definition of "health practitioner" in subsection 2 (1) may act as evaluators;
- (c) prescribing categories of persons as health practitioners for the purpose of the definition of "health practitioner" in subsection 2 (1);
- (d) prescribing things that do not constitute a personal assistance service for the purpose of the definition of "personal assistance service" in subsection 2 (1);
- (e) prescribing places, programs, providers and circumstances for the purpose of the definition of "recipient" in subsection 2 (1);

- (f) prescribing things that do not constitute treatment for the purpose of the definition of “treatment” in subsection 2 (1);
- (g) prescribing excluded acts for the purpose of clause 3 (1) (b);
- (h) governing determinations by health practitioners of capacity with respect to treatment and governing determinations by evaluators of capacity with respect to admission to a care facility or a personal assistance service;
- (i) prescribing health facilities for the purpose of subsection 24 (1);

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by the Statutes of Ontario, 2007, chapter 8, subsection 207 (18) by adding the following clauses:

- (i.1) prescribing a situation as a crisis for the purposes of the definition of “crisis” in section 39;
- (i.2) clarifying the modifications necessary in the application of Part III under section 54.2;

See: 2007, c. 8, ss. 207 (18), 232 (2).

- (j) regulating the amounts that a person who is entitled to copy medical or other health records under subsection 76 (2) may be charged for copies of the records;
- (k) governing the transfer of information between an evaluator and the person responsible for authorizing admissions to a care facility, or between an evaluator and the member of a service provider’s staff who is responsible for a personal assistance service;
- (l) governing the transfer of information that is relevant to the making of a decision under this Act concerning a treatment, admission to a care facility or a personal assistance service, including regulating the disclosure of such information to the person who is the subject of the decision or to his or her substitute decision-maker and requiring or permitting the disclosure of such information with the consent of the person or his or her substitute decision-maker;
- (m) prescribing forms for the purpose of this Act or the regulations. 1996, c. 2, Sched. A, s. 85 (1).

Application

- (2) A regulation may be general or specific in its application. 1996, c. 2, Sched. A, s. 85 (2).

86. REPEALED: 1996, c. 2, Sched. A, s. 86 (2).

Transition, treatment

87. (1) This Act applies to a treatment that is begun after the day this Act comes into force, even if a finding as to capacity was made or consent was given before that day. 1996, c. 2, Sched. A, s. 87 (1).

Same

- (2) This Act does not apply to a treatment that is begun on or before the day this Act comes into force. 1996, c. 2, Sched. A, s. 87 (2).

Transition, admission

88. (1) This Act applies to the admission to a care facility of a person who is placed on the waiting list for the facility after the day this Act comes into force, even if a finding as to capacity was made or consent was given before that day. 1996, c. 2, Sched. A, s. 88 (1).

Same

- (2) This Act does not apply to the admission to a care facility of a person who is placed on the waiting list for the facility on or before the day this Act comes into force. 1996, c. 2, Sched. A, s. 88 (2).

Application of section

- (3) This section does not apply to a care facility described in clause (d) of the definition of “care facility” in subsection 2 (1). 1996, c. 2, Sched. A, s. 88 (3).

Transition, section 19

89. Section 19 applies to an appeal commenced before the day this Act comes into force if, on the day this Act comes into force, the appeal has not been finally disposed of and an order authorizing administration of the treatment before the final disposition of the appeal has not been made. 1996, c. 2, Sched. A, s. 89.

Transition, section 32

90. (1) If, on the day this Act comes into force, an application commenced under section 28 of the *Consent to Treatment Act, 1992* has not been finally disposed of,

- (a) subsections 32 (3) and (4) of this Act apply to the application;
- (b) subsection 32 (2) of this Act does not apply to the application; and
- (c) subsection 28 (6) of the *Consent to Treatment Act, 1992*, as it read immediately before the day this Act comes into force, continues to apply to the application. 1996, c. 2, Sched. A, s. 90 (1).

Same

(2) For the purpose of subsection 32 (5) of this Act, a final disposition of the following applications shall be deemed to be a final disposition of an application under section 32 of this Act:

- 1. An application commenced under section 28 of the *Consent to Treatment Act, 1992* before the day this Act comes into force.
- 2. An application commenced under section 51 of the *Mental Health Act* before the day subsection 20 (40) of the *Consent and Capacity Statute Law Amendment Act, 1992* came into force. 1996, c. 2, Sched. A, s. 90 (2).

Transition, section 33

91. (1) If, on the day this Act comes into force, an application commenced under section 29 of the *Consent to Treatment Act, 1992* has not been finally disposed of,

- (a) subsections 33 (5) and (6) and clauses 33 (7) (a), (b) and (c) of this Act apply to the application;
- (b) subsections 33 (3) and (4) of this Act do not apply to the application; and
- (c) subsections 29 (3) and (7) of the *Consent to Treatment Act, 1992*, as they read immediately before the day this Act comes into force, continue to apply to the application. 1996, c. 2, Sched. A, s. 91 (1).

Same

(2) Clause 33 (7) (d) and subsection 33 (8) of this Act apply to an appointment made pursuant to an application commenced under section 29 of the *Consent to Treatment Act, 1992* before the day this Act comes into force. 1996, c. 2, Sched. A, s. 91 (2).

Transition, section 34

92. (1) If, on the day this Act comes into force, an application commenced under section 32 of the *Consent to Treatment Act, 1992* has not been finally disposed of,

- (a) subsections 34 (3), (4), (5) and (6) of this Act apply to the application; and
- (b) subsection 34 (2) of this Act does not apply to the application. 1996, c. 2, Sched. A, s. 92 (1).

Same

(2) For the purpose of subsection 34 (7) of this Act, a final disposition of an application commenced under section 32 of the *Consent to Treatment Act, 1992* before the day this Act comes into force shall be deemed to be a final disposition of an application under section 34 of this Act. 1996, c. 2, Sched. A, s. 92 (2).

Transition, section 35

93. If, on the day this Act comes into force, an application commenced under section 30 of the *Consent to Treatment Act, 1992* has not been finally disposed of, subsections 35 (2) and (3) of this Act apply to the application if it was commenced by a person who is a substitute decision-maker as defined in Part II of this Act. 1996, c. 2, Sched. A, s. 93.

Transition, section 36

94. If, on the day this Act comes into force, an application commenced under section 31 of the *Consent to Treatment Act, 1992* has not been finally disposed of, subsections 36 (2) and (3) of this Act apply to the application if it was commenced by a person who is a substitute decision-maker as defined in Part II of this Act. 1996, c. 2, Sched. A, s. 94.

95. OMITTED (ENACTS SHORT TITLE OF THIS ACT). 1996, c. 2, Sched. A, s. 95.

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