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GUARDIANSHIP - DEALING WITH MINORS AND ADULTS UNDER DISABILITY

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Guardianships: Dealing with Minors and Adults under Disability[1]

Those who are unable to manage their own finances and care and who are not capable of making their own financial or personal care decisions are vulnerable and susceptible to abuse. Guardianship is one means, often a choice of last resort, to manage the affairs of those under disability including by definition, minor children. There are two government Offices in Ontario, both within the jurisdiction of the Ministry of the Attorney General, who are responsible for the safeguarding of the personal and financial interests of those under disability: the Offices of the Children's Lawyer and of the Public Guardian and Trustee.

This paper will provide an overview of guardianship respecting minors and adults under disability as well as the jurisdiction and role of the Public Guardian and Trustee, the Children's Lawyer, and the Accountant of the Ontario Superior Court of Justice. Some tips on best approaches and practice when commencing guardianship applications will also be touched upon. Finally, a selection of current and relevant statutory excerpts from the legislation and links to the full statutes will be appended.

1. Guardians
Property

In the context of adults under disability, "guardian" can refer to a "guardian of the person" or a "guardian of property".

A "guardian of property" is someone who is court appointed to manage the financial affairs of a person who is declared mentally incapable of doing so.

[1] This paper was prepared by Kimberly Whaley who gratefully acknowledges contributory content from Kenneth R. Goodman, Public Guardian and Trustee for Ontario, Linda Waxman, Legal Director, Property Rights, Office of The Children's Lawyer, and Steve Adams, Accountant of the Ontario Superior Court of Justice, and comprises relevant materials in aid of the speakers presenting to Step on January 14, 2015. The materials were prepared with reference to materials presented at the April 5, 2011 STEP Canada Presentation: "*The Office of the Children's Lawyer Property Rights Department*" by Lucy McSweeney and Linda Waxman of the Office of the Children's Lawyer and "The Public Guardian and Trustee (for the Province of Ontario)" by Laurie Redden and content from the websites of the Ministry, including those of the Office of the Public Guardian and Trustee and the Office of the Children's Lawyer.

Pursuant to s. 6 of the *Substitute Decisions Act*, *1992*, S.O. 1992, chapter 30(the "*SDA*") a person is incapable of managing property if:

> *The person is not able to understand information that is relevant to making a decision in the management of his or her property or is not able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.*

A guardian for property can do anything the incapable person could normally do in relation to his/her own property. This includes collecting and depositing income, paying bills, making purchases, selling assets, handling investments, managing real estate and looking after legal matters. The only matter of a financial nature that a guardian of property cannot do is make, or change, a Will on behalf of the incapable person.

A guardian's authority ends if and when the person under guardianship dies.

The estate trustee named in the person's Will is authorized to administer the estate. If there is no Will, authorized next of kin, or others can ask the court for authority.

Personal Care

A guardian of the person will be appointed where an individual is incapable of personal care. Under s. 45 of the *SDA*, a person is incapable of personal care if:

> *The person is not able to understand information that is relevant to making a decision concerning his or her own health care, nutrition, shelter, clothing, hygiene or safety, or is not able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.*

The duties, powers and obligations of an attorney under a power of attorney and a guardian are essentially the same. The major difference is in how each are appointed. An attorney is often a trusted family member,

friend, other, or professional that a person appoints while capable to look after his/her finances or personal care and treatment decisions in the event of decisional incapacity. A guardian is someone appointed after a person has been declared incapable of making decisions respecting property or personal care or both, usually but not always because the person never made a power of attorney.

In the absence of a power of attorney document, a guardian of property is sometimes appointed to make decisions on behalf of the person declared incapable.

While in Ontario, a parent is automatically the "guardian of the person" of his/her minor child, a parent is not automatically the "guardian of property" of his/her minor child's property.

Minors: The Office of the Children's Lawyer

The Office of the Children's Lawyer (the "OCL") delivers programs in the administration of justice on behalf of children with respect to their personal and property rights. Lawyers within the OCL represent children in various areas of law including child custody and access disputes, child protection proceedings and civil litigation. The Children's Lawyer for Ontario (the "CL") is appointed by Order-in-Council pursuant to s.89(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 which was formally established in 1881 under Ontario's first *Judicature Act*.

The OCL represents the legal interests of children at the request of the Court and pursuant to statute or the *Rules of Civil Procedure* R.R.O. 1990, Reg. 194 (the "*RCP*"). The OCL has two distinct legal departments: *personal rights* and *property rights*. The OCL has in-house lawyers, clinicians and staff and agents across the province. The OCL is an independent law office operating within the Victims and Vulnerable Persons Division of the Ministry of the Attorney General.

Personal Rights Department:

At the request of the Court, the personal rights lawyers provide representation to children and minor parents of a child involved in protection proceedings under s.38 of the *Child and Family Services Act* and to children involved in private custody and access disputes in accordance with s.89(3.1) of the *Courts of Justice Act*.

The Personal Rights Department also has clinical investigators who will prepare reports that are filed with the Court in private custody and access disputes under s. 112 of the *Courts of Justice Act*.

Property Rights Department:

Lawyers in the Property Rights Department have carriage of civil and estate litigation files, as well as any estate Notice files in which there are complex estate administration issues. Under Rule 74.04(4) and (5) of the *RCP*, the OCL is served with a Notice of Application for a Certificate of Appointment of Estate Trustee if there are any minor, unborn or unascertained interests.

Law clerks in the Property Rights Department have carriage of estate Notice files. Depending upon the interest of the minor, they will monitor the administration of Ontario estates where there are minor beneficiaries.

The Minors' Funds Department processes the requests for payment out of court for minors' funds.

Dealing with a Minor's Property: Guardianship

Money may be payable to a child:

- under a court order for damages;
- in an estate (with or without a will);
- under a life insurance policy where the child has been named as the designated beneficiary;
- under an RRSP or other pension plan; or

- under some other death or accident benefit.

To reiterate, a parent is not automatically the "guardian" of his/her own child's property. A parent (or other person with custody) cannot receive property belonging to a minor if it has a value in excess of $10,000.00 absent authority (s.51 of the *Children's Law Reform Act* R.S.O. 1990, Chapter C.12 "*CLRA*").

Unless money is payable to a minor under a judgment or order of the court, if any amount owed to a minor is less than $10,000.00, the person under a duty to deliver it to the minor may deliver it to:

- a parent with whom a child resides,
- a person who has custody of a child, or
- the child, if the child has a legal obligation to support another person (s.51 (1) *CLRA*).

A person who receives the minor's property has the same responsibility as a guardian for the care and management of the property (s.51(4) CLRA).

A court order is required for a person to be appointed as the guardian of a minor's property. S.47 and s.58 of the *CLRA* establish the framework for appointing a guardian of a minor's property. Since it is the OCL who responds to guardianship applications brought concerning a minor's property in accordance with s.47 of the *CLRA*, the person making the application should be named as the *Applicant* and the minor child, ("X" by his litigation guardian, The Children's Lawyer) should be named as the *Respondent*.

Who may bring a guardianship application?

A parent or any other person may be appointed as guardian of a minor's property upon application to the Court and with notice to the OCL (s.47 *CLRA*). Subject to a court order or agreement, the parents of a child are equally entitled to be appointed as guardians. Parents are preferred over non-parents. More than one guardian may be appointed and multiple

guardians are jointly responsible (s.48 *CLRA*). Where the amount of money is large, the court may require an insured professional, for instance a trust company or other independent professional to act as guardian.

The Ontario Superior Court of Justice and the Ontario Court of Justice have jurisdiction to make guardianship orders for minors' property (section 18(1) *CLRA*). However, only the Ontario Superior Court of Justice has jurisdiction to grant a guardianship judgment that permits encroachment (s. 59(1) *CLRA*).

Guardians must submit a Management Plan in the prescribed form (a document outlining the details of how the guardian plans to manage the minor's property).

Responsibilities of a Guardian of Property:

A guardian of property is responsible for the care and management of the minor's property (s.47(2) *CLRA*). The guardian is required to:

- keep careful accounts of all dealings with the child's money;
- make proper trustee investments and invest the child's money as required by the management plan approved by the court (guardians must comply with the *Trustee Act* R.S.O. Trustee Act, R.S.O. 1990, cT.23 (the "*Trustee Act*") requirements for the investment of trust funds);
- transfer all the property to the child at age 18 (s.53 *CLRA*); and
- If the child has a legal obligation to support another person, the court will terminate the guardianship on the child's application (s.56 *CLRA*).

In a guardianship application, the Court considers all circumstances including the ability of the applicant to manage the property, the merits of the proposed Management Plan for the investment of the child's funds and the views and preferences of the child where they can be reasonably ascertained.

The Court shall require the guardian to post a bond, but the court may dispense with a bond where the applicant is a parent of the child (s.55 *CLRA*). Usually, the court will not dispense with a bond where the applicant does not have assets in excess of the amount of the child's funds.

The Guardianship Order:

The guardianship order/judgment should include the Management Plan for the child's money or property so that the guardian has clear directions for managing the money. The guardian is required to keep careful records of all transactions including investments, receipts, and disbursements of the child's funds so as to be able to account to the court as required and to the child when he/she reaches the age of 18 years. Where a large amount of money is involved, the guardianship order may require the guardian to regularly pass the guardianship accounts before the court at fixed intervals. The interval may range usually from one to five years.

Where the guardianship order does not expressly allow the guardian to spend the child's money, the guardian only has the authority to hold and invest the money until the child reaches the age of 18 years.

The guardian should not use the child's money to pay a lawyer for a court guardianship application unless the guardianship order authorizes it.

The child's money cannot be used for the financial support of the child. Parents have a legal obligation to support their children. Guardians are not entitled to use the child's funds to provide for support for the child unless the guardianship order/management plan authorizes it.

A guardianship order is specific to the property, rather than to the minor. Accordingly, a guardianship application should only be commenced AFTER the minor's entitlement to property (and the quantum) has been finally determined. As well, in order for the OCL and the Court to assess the application against the requirements of the *CLRA*, particularly the reasonableness of the Management Plan and the applicant's accounting plan, the nature and quantum of the minor's property must be ascertained.

Only the Ontario Superior Court of Justice has jurisdiction to grant a guardianship judgment that permits encroachment (s. 59(1) *CLRA*).

Guardianship Applications for Minors:

In reviewing a guardianship application, the OCL evaluates the requirements listed in the *CLRA* and considered in the case law such as:

- The Applicant's ability to manage the property (s.49(a) *CLRA*);
- Merits of the plan for the care and management (Management Plan) put forward by the applicant (s.49(b*) CLRA*);
- Whether the anticipated rate of return is likely to be more favourable than if the funds are paid to the ASCJ, which is a factor that has been considered by the Court - *Jones (litigation guardian) v. Downing* [2001] O.J. No. 1307 (S.C.J.);
- Information about the applicant's ability to keep accounts, to account and, if required, pass accounts (s.52 *CLRA*);
- The guardianship must terminate when the minor attains the age of majority and the funds must be transferred to the former minor (s.53 *CLRA*);
- Whether the applicant will charge compensation for acting as guardian (s.54 *CLR*A); and
- The applicant's ability to post a bond (s.55 *CLRA*) which is mandatory for any applicant who is not a parent. In the case of a parent, the applicant must satisfy the Court as to why it is not appropriate for the parent to be required to post a bond.

The Management Plan:

The Management Plan should be prepared and signed by the applicant, and not the financial advisor or lawyer, because it is the Applicant that the Court will hold accountable.

The proposed investments should reflect consideration of the duty to act as a prudent investor under s.27 of the *Trustee Act*. The Management Plan

should allow for flexibility by providing a percentage range of investments as among cash, fixed income and equities, and should include particulars of any fees, loads or commissions associated with the investments.

The Management Plan must set out details of any authorized encroachments, for example for the minor's income tax and preparation of income tax returns. The Management Plan must be sufficiently specific to permit meaningful review on a passing of accounts or when the child attains 18 years. There is less room for dispute on review, if the judgment is specific as to the powers of the guardian: *Green v. Green Estate*, [1993] O.J. No. 3252 (S.C.J.). If the guardian seeks authority to use the minor's funds for the minor's support, details supporting this request will be required, particularly if the applicant is a parent. Under s.31 of the *Family Law Act* R.S.O. 1990, c.F3, (the "*FLA*") a parent has a legal obligation to support his or her child.

Personal Injury Proceeds:

If the guardianship order applies to funds received by the minor from a personal injury settlement, information about the minor's ongoing needs will be required (for example, Future Care Costs Report, Home Accessibility Report etc.) Factors considered will include the timing and size of payments from a structure, the costs of housing, transportation, therapies, assessment, attendant care, professional fees, etc. Depending on the quantum involved, and the structure and award, a corporate guardian may be more appropriate.

If there is a possibility that a minor may be incapable upon attaining the age of majority, the guardianship judgment should include a term requiring the guardian to arrange for the minor to be assessed by a qualified capacity assessor prior to the minor's 18th birthday. The judgment should set out who will arrange for the assessment and how it will be funded and provide that, if the minor is found incapable, arrangements will be made for a guardian to be appointed in accordance with the *SDA*.

Common Problems with Guardianship Applications Involving Minors:

- The parent has a conflict because he/she wishes to use the minor's funds for the minor's support or family support;
- The applicant has no experience managing money or a poor history of management, for example, a bankruptcy;
- The applicant is unable to obtain a bond;
- The proposed investment is too risky – investment in the proposed guardian's own business (self-interest/dealing);
- The investment would not permit the minor to easily access his/her funds at 18 (a proposal to use the minor's funds for a down payment on real estate to be purchased by the parent); and
- The application was commenced before the applicant was fully advised about the option of payment to the OSCJ to the Accountant and the fiat procedure, but the applicant is reluctant to abandon the application because legal fees have been incurred.

Concerns About Investment of Trust or Guardianship Funds In an RESP:

The OCL recognizes the advantages of a parent or other relative contributing to an RESP to benefit a minor child, but investment in an RESP may not be a prudent investment when the proposal is to fund the RESP with assets belonging to the minor and the parent is the subscriber.

If an RESP has been established for a minor who does not attend post-secondary education, the savings grant is returned to the government, and any interest may be lost resulting in minimal return on the investment.

Because the subscriber is the owner of the funds, the subscriber may withdraw RESP contributions at any time, roll the RESP over into the subscriber's RRSP or designate another child as beneficiary. RESP contributions may be considered property of the subscriber upon marriage breakdown, and therefore subject to equalization. RESP funds are not creditor proof in the event of the subscriber's bankruptcy. Upon the death of

the subscriber, RESP funds may be considered an asset of the subscriber's estate and subject to creditor claims. These concerns were shared by the Court in *Hoad v. Giordano* [1999] O.J. No. 456 (S.C.J.).

Additional Issues to Consider:

If the minor's property has a modest value, a guardianship application may not benefit the minor once all of the guardianship expenses are considered (legal fees for application, posting a bond, passing of accounts). If a minor will attain the age of majority in a few years, the short-term duration of the guardianship may mean that the guardian will not have sufficient time to recover the guardianship costs.

The guardian must follow the Management Plan. If a guardian wants to use the guardianship funds for an expense not specifically authorized under the Management Plan the guardian must apply to the Court to revise the guardianship order. Unlike the Public Guardian and Trustee, the OCL has no authority to approve amendments from time to time.

Other options to Guardianship:

Payment to the Accountant of the Superior Court of Justice (the "ASCJ"):

Payment into Court often allows for a more flexible approach or option respecting unanticipated expenses for the minor. If any funds are required for the direct benefit of the child before the age of 18 years, the OCL has an informal procedure for parents or caregivers to request payments out of court for the direct benefit of the child when the parent/caregiver cannot afford the expense. The parent/caregiver may write directly to the OCL. Counsel from the OCL attends before a Judge for a decision about whether the Judge will order that the money requested will be paid out of court to the parent/caregiver. Alternatively, the parent/ caregiver may apply formally to the court on notice to the OCL (see Rule 72 of the *Rules of Civil Procedure*).

The Office of the Public Guardian and Trustee operates the ASCJ. Funds held by the ASCJ are secure and earn interest at a competitive rate. The funds will be paid out to the minor when she/he attains the age of 18 years, unless a Will, Court Order etc. establishes a later distribution date. The role of the ASCJ in managing minors' funds is discussed in more detail below.

Trust Terms:

If the value of the minor's funds exceeds $10,000.00 the following sources may provide authority for the property to be held in trust by a parent or other individual: a Will that contains trust terms, designation of a trustee, a trust settlement (*inter vivos* trust) or Court order appointing a guardian of property under the *CLRA*.

Litigation Guardian for Minors:

In a civil case, a child under the age of 18 cannot sue or be sued in his/her name. A litigation guardian would need to be appointed ("LG"). One exception to this rule is in Small Claims Court cases for $500 or less. A litigation guardian is an adult who makes decisions on behalf of a child in a court case. A litigation guardian is authorized to take all steps that the child would be able to take in the proceeding as if the child were an adult (7.05(1)) and must protect the child's interest and take all necessary steps to do so. A litigation guardian must be represented by a lawyer.

The CL is a litigation guardian of last resort under Rule 7.04 of the *RCP* and will act only if no parent, guardian or other adult exists who is willing and able to act as LG.

The CL may initiate a proceeding on behalf of a minor, pursuant to Rule 7.02(2) which permits the CL to act as litigation guardian for a minor plaintiff or applicant. The most frequent proceedings initiated by the CL include Motions/Applications for an order requiring a passing of accounts and dependant's relief/support claims.

The CL also reviews/approves settlements reached on behalf of minor litigants if a report is requested by the Court pursuant to Rule 7.08.

When Would I Contact the OCL?

The OCL must be given notice of certain motions, applications and actions, pursuant to the *RCP,* including for example, dismissal of a minor's action for delay (Rule 24.02); removal of a minor's litigation guardian (Rule 7.06(2)), and removal of the lawyer for a litigation guardian (Rule 15.04(3)).

The OCL represents minor respondents in a proceeding against their interest in a trust or estate by operation of law, unless the Court orders otherwise, pursuant to Rule 7.03(2) of the *Rules of Civil Procedure*. The OCL will respond to the following types of claims on behalf of a minor, unborn or ascertained beneficiary:

- Variation of trusts;
- Applications to pass accounts
- Removal of trustees;
- Will challenges;
- Will interpretations;
- Applications for directions;
- Dependant relief claims;
- Sale/encumbrances of minor's real estate; and
- Guardianship applications brought in respect of a minor's property.

When Should I NOT contact the OCL?

The OCL has no authority in law to administer estates even if the sole beneficiary is a minor. The OCL will neither investigate to determine estate assets, nor secure estate assets. The OCL also has no authority to act as guardian of property or hold funds belonging to a minor (the Accountant of the Superior Court of Justice holds funds to the credit of minors). Furthermore, the OCL does not act for minors before administrative law tribunals such as immigration or human rights matters.

2. Adults with Disability: The Public Guardian and Trustee

The Office of the Public Guardian and Trustee ("OPGT") is a corporation sole under the *Public Guardian and Trustee Act*, R.S.O. 1990, c. P-51. The OPGT is part of the Victims and Vulnerable Persons Division of the Ministry of the Attorney General. Lawyers at the OPGT may be assigned to conduct litigation in family law, general civil, trusts and estates and corporate law. Other lawyers do solicitor's work including opinions, policy, administration of estates, contracts, privacy and real estate law. Specialized legal work such as personal injury or bankruptcy is done by retainer of private-sector lawyers, where appropriate.

Overview of the role of the PGT:

- The PGT acts as guardian of property and personal care of *last resort* for incapable adults under the *SDA*;
- The PGT acts as statutory guardian of property for incapable adult clients, when appointed by s.16 of the *SDA* (pursuant to a capacity assessment), and by s.15 *SDA* (pursuant to a *Mental Health Act* certificate) and court-ordered for some clients;
- The PGT also acts as guardian for personal care when Court-ordered pursuant to the *SDA;*
- The PGT conducts investigations into allegations of risk of serious adverse effects to incapable adults under the *SDA*;
- The PGT reviews and comments upon private applications to the Ontario Superior Court of Justice for guardianship under the *SDA,* taking a formal position in a proceeding if necessary;
- The PGT also makes treatment and long-term care placement decisions under the *Health Care Consent Act*, 1996, S.O. 1996, c.H.2;
- The PGT administers certain estates of deceased persons who die in Ontario without a Will and without known next of kin in Ontario under the *Crown Administration of Estates Act*, R.S.O. 1990, c. C.48;

- Performs the functions of The Accountant of the Superior Court of Justice;
- Acts as litigation guardian or legal representative of last resort of incapable adults in litigation under the *RCP*, the *Family Law Rules*, and the *Rules of Small Claims Court*;
- The PGT provides reports to the Court under Rule 7.08(5) on settlements affecting adult parties under disability;
- Administers perpetual care trust funds of some cemeteries under the *Cemeteries Act (Revised)* and pursuant to the *Escheats Act*, may take possession of corporate property forfeit to the Crown under the Ontario *Business Corporations Act* or property escheating to the Crown under the *Succession Law Reform Act*, R.S.O. 1990, c.S.26 or other statutes; and
- Monitors the use of charitable property in Ontario, to ensure protection of the public interest under the *Charities Accounting Act* R.S.O. 1990, c.C.10 and other statutes.

Guardianships: Adults under Disability

A guardian for property may, upon application, be appointed by the Court for a person who is declared incapable of managing property, pursuant to s.22 of the *SDA*. The Court shall not appoint the PGT as a guardian under s.22 unless the application proposes the PGT as guardian; the application is accompanied by the PGT's written consent to the appointment; AND there is no other suitable person who is available and willing to be appointed. See, as authority for example, the case of *Public Guardian and Trustee v. Lico*, 2012 ONSC 1872 whereby the PGT sought to be appointed guardian of property pursuant to s.22 of the *SDA*.

Upon an application, the Court may appoint a guardian of the person for a person who is incapable of personal care decisions pursuant to s.55 of the *SDA*. The Court shall not appoint the PGT as guardian under s.55 unless the application proposes the PGT as guardian, the application is

accompanied by the PGT's written consent and there is no suitable person who is available and willing to be appointed.

The PGT may be appointed as a "statutory guardian" of property, pursuant to s.15 or s.16 of the *SDA*. If a certificate issues under the *Mental Health Act* certifying that a person who is a patient of a psychiatric facility is incapable of managing property, the PGT is the person's statutory guardian (s.15 of the *SDA*). Under s.16, if the person is not a patient in a psychiatric facility anyone can request that a capacity assessor perform an assessment of the person to determine if the person is capable of managing property. If the person does not refuse to be assessed and the capacity assessor finds the person incapable of managing property, the prescribed forms are forwarded to the OPGT and the PGT thereafter automatically becomes the person's statutory guardian of property.

When the PGT is acting as statutory guardian for an incapable person it can, in turn, appoint certain people to act in its place. A relative, spouse or partner of the incapable person may, for example, be appointed by the PGT. Applications can be made to replace the PGT as statutory guardian.

While the OPGT is limited as to who it can appoint, a Court is not limited in who it can appoint. A person who is paid to provide services to the incapable person is generally prohibited from being the guardian of the person. The Court also has the exclusive authority to appoint a guardian to replace an attorney under a power of attorney.

The recent case of *Valente v. Valente, 2014 ONSC 2438* provides an overview of the appointment of guardians under the *SDA*. In this case a son and daughter-in-law were appointed as joint guardians of the property and of personal care of an elderly woman who was suffering neglect at the hands of her grandson and daughter (who were removed as her attorneys for property by reason of misconduct).

Duties of Guardians:

To Keep Accounts: Guardians of property are required to keep accounts pursuant to s.32(6) of the *SDA*.

Guardians for personal care are required to keep records pursuant to s. 66(4.1) *SDA*.

The contents of accounts are prescribed by O.Reg 100/96 under the *SDA.* The format of accounts for the passing of an estate or guardian's accounts is outlined in Rule 74.17, which is the same format required for estate trustees pursuant to Rule 74.17 except there is no obligation to distinguish between income and capital accounts as a guardianship is not a testamentary accounting. The regulation also prescribes personal care decisions must be recorded, and disclosure and retention rules for accounts and records.

To Act in Accordance with the Management Plan and Guardianship Plan: Guardians must act in accordance with their Management Plan and/or Guardianship Plan, as approved by the Court or the PGT. If a guardian must amend a Plan because circumstances have changed, an Amended Management Plan or Amended Guardianship Plan may be submitted to the PGT pursuant to its statutory authority in sections 32(110 and 66(16) of the *SDA*.

For further guidance on Fiduciary Accounting[2]:

http://whaleyestatelitigation.com/resources/WEL_On_Fiduciary_Accounting_2014.pdf

Helpful Tips in Addressing Applications which involve the PGT:

Service of documents: Serving the PGT "out of an abundance of caution" is not proper service. The client or interest must be identified.

[2] Whaley Passing of Accounts: "*Whaley Estate Litigation on Fiduciary Accounting: Guardianship Accounts; Attorney Accounts; Estate Accounts; Trust Accounts*"

Deposing information obtained by phone: When you intend to depose information provided by an employee of the OPGT you should obtain the name and role of the employee to include in your affidavit. Where an affidavit is made on "information and belief" the source of the information must be indicated, which is not "the Office of the Public Guardian and Trustee", rather it is an individual. In addition, if you require confirmation of a fact, it is best to write to the office and obtain a written response.

Hypothetical questions: Form time to time, staff receive calls about 'hypothetical questions'. Sometimes lawyers call OPGT counsel about an existing case where another OPGT lawyer is or was already involved. Any questions relating to or arising out of an existing case should be directed to the OPGT lawyer with carriage. If you have concerns, ask to speak to the lawyer's manager. Government lawyers cannot give legal advice to you. They can assist you with process inquiries or direct you to other resources.

Orders: An order affecting the PGT or the ASCJ can only be made on notice. Serve the PGT or ASCJ in advance in accordance with the RCP.

Fees of the PGT: Fees payable to the PGT include HST.

Where OPGT Intersects with OCL:

Passing of Accounts in the Superior Court of Justice:

Where the interest of a person who would be represented by the PGT is the same or not in conflict with the interest of a minor or unborn person, who would be represented by the OCL, it may be appropriate to consider whether one instead of both offices should participate in a passing of accounts, to avoid duplication of resources and fees to the estate. The OPGT represents adults under disability, absentees and unprotected charitable interests. (An absentee is a person whose name is known, but it is not known if they are living or dead. It is not necessary that the person be declared an absentee).

Guardianship of minor children who are incapable at age 18:

Where a guardian of property has been appointed pursuant to the *CLRA* for a child under age 18 who is likely to be incapable of managing property upon attaining age 18, transitional wording should be included in the guardianship order to provide for events when the child turns age 18.

Bequests under Wills to minor children:

Frequently paid into Court to the ASCJ pursuant to s.36 of the *Trustee Act*. A copy of the Will must be provided so that the ASCJ will know the terms upon which the trust funds must be held and when to pay the funds out of Court. The duration of the trust, among other factors, will also determine what investment strategy will apply to the trust funds.

Each Will is reviewed by Counsel to determine the age for payment out to the minor. Often Wills reviewed do not provide for a gift over to a second beneficiary if the child did not attain the age specified, where the bequest was to be delayed past the age of majority (18 in Ontario). As a result, the Rule in *Saunders v. Vautier* applies, allowing children to call for their funds at age 18 instead of age 21, 25, or later as the testator intended. Parents should encourage their children to obtain financial planning advice in advance of receiving inheritances. The ASCJ cannot refuse to pay trust funds to a child who is unsophisticated in investments.

Payment out of Court to a Guardian of Property

A guardian of property appointed by the Court for a minor or incapable adult whether under the *CLRA, or SDA* requires a specific term in a Court order directing the ASCJ to pay to "[minor or incapable person], by his/her guardian of property, X, the funds held in Court File No. xxx/14 (or, if this is in respect of a guardianship order, held in trust for X including all accrued interest) in the Ontario Superior Court at Toronto."

If such a term is not included in the guardianship order, a separate order, obtained on motion in the original proceeding (eg. Court File No. xxx/14) is required, directing the Accountant to pay out the funds. The order should

not specify the exact amount of the funds, as interest accrues monthly. Rule 72.03(5) provides that interest is automatically included in the payment out of Court, unless the order provides otherwise.

Guardians of Incapable Adults and Rule 7.08 Settlements

Where an incapable person, who has no attorney for property, is the plaintiff in a tort action or a claim for lump-sum Statutory Accident Benefits and there is or will be funds flowing to the incapable person, it is important to arrange for a guardianship of property appointment at the earliest opportunity.

If the adult is declared incapable and cannot manage funds, the OSCJ will not pay funds to the incapable person on the motion for approval of the settlement under Rule 7.08. Rule 7.09 provides that those funds must be paid into Court, unless the Court orders otherwise; therefore, the application under the SDA should precede the Rule 7.08 motion or application.

It is a more efficient, cost-effective and timelier service to a person under disability to avoid payment into Court where guardianship is or should be arranged.

If a guardian is already in place at the time of the approval of the settlement, there may be additional terms imposed on the guardian as a result of the settlement; For example, respecting the posting of a bond, or the formal passing of accounts, or other terms. If these pending legal proceedings are known at the time the guardianship is initiated, they should be included in “Legal Proceedings” in the proposed Management Plan. The review of the Management Plan by the OPGT should then trigger a consideration of terms to be included in the original guardianship order, to avoid amendments at a later date upon court approval of the settlement.

Reports to the SCJ under Rule 7.08(5)

The PGT has a role to provide Reports to the Court on settlements affecting adults under disability, pursuant to Rule 7.08(5) ***only where the***

PGT or any of its clients are not parties to the proceeding. These Reports are made specifically on request of a Judge of the Ontario Superior Court of Justice identifying the issues on which recommendations and reasons are requested. Reports are provided directly to the Court and copied to Plaintiff's counsel.

A financial planner or estate lawyer/counsel, may be asked to implement changes ordered by the Ontario Superior Court as a result of the settlement approval process and the PGT may have to be consulted in doing so.

3. The Accountant of the Superior Court of Justice

The Accountant of the Superior Court of Justice (ASCJ) accepts payments when the Ontario Superior Court of Justice issues judgments and court orders providing for the payment of money and other assets, such as mortgages and securities into court.

The ASCJ manages the funds or holds the assets, until the ASCJ is required to pay the money or other assets out of court under judgments and orders of the Superior Court of Justice or other provisions of law.

Effective January 1, 2013 money is also paid into court for Small Claims Court and Family Court proceedings. The ASCJ makes all investment decisions in the best interests of the individuals for whom it holds assets, based on information available.

The ASCJ holds money and other assets paid into court for minors until they become eligible to receive same: upon turning 18 years of age or upon meeting other terms as provided by a trust, or as set out in a court order.

The ACSJ charges fees monthly as set out in the OPGT Fee Schedule: 3.0% of receipts and disbursements (other than original payments into court), 3/5 of 1% per annum of the average annual value of the funds under management.

Except in cases of decisional incapacity, upon turning 18 years of age or other date of entitlement a child is considered legally capable of looking after the money that was paid into court. The ASCJ must pay the money out to the child once they become entitled.

Minors' funds are paid to the ASCJ by the following methods:

- Payment into Court may be required by Court order, in which case the order must contain the information required by Rule 59.03(5) of the *RCP*;
- payment of life insurance proceeds into Court may be mandatory under s.220 of the *Insurance Act*; and
- a person holding funds due to a child may pay the funds into Court pursuant to s.36(6) of the *Trustee Act*.

A minor's parents or caregiver can request payment out of funds held to the minor's credit, if funds are required for the minor's direct benefit. Requests are submitted to the Minors' Funds Department which makes a recommendation and arranges for a Justice of the Ontario Superior Court of Justice to make a determination about each request, pursuant to Rules 72.03(10) and (12) of the *RCP*. No fees are currently charged by the OCL to process a "fiat" request and the requester need not be represented by a lawyer since a formal motion or application is not necessary.

The following material is required to request payment out of Court:

1. A letter from the parent or caregiver explaining the following: relationship between the person requesting the funds and the minor; amount requested and purpose for which the funds are sought; source of the money in Court, if known; Accountant's file number, if known; any other special circumstances that support the request.
2. A Financial Statement of the parent or caregiver (blank forms can be obtained from the Minors' Funds Department); and
3. If the minor is 14 years of age or older, the minor's written consent to the request for funds and to the payment out of Court.

The ASCJ and the OPGT can be reached at:

The Accountant of the Superior Court of Justice
Office of the Public Guardian and Trustee
595 Bay Street, Suite 800
Toronto, ON M5G 2M6

The Children's Lawyer can be reached at:

Office of the Children's Lawyer
c/o MGS Delivery Services
2B-88 Macdonald Block
77 Wellesley Street West
Toronto, ON M7A 1N3

Schedule "A" Select Excerpts from Applicable Legislation

1. ***Rules of Civil Procedure*, R.R.O. 1990, Regulation 194 (For full Rules:http://www.elaws.gov.on.ca/html/regs/english/elaws_regs_900194_e.htm)**

RULE 7 PARTIES UNDER DISABILITY

REPRESENTATION BY LITIGATION GUARDIAN

Party under Disability

7.01 (1) Unless the court orders or a statute provides otherwise, a proceeding shall be commenced, continued or defended on behalf of a party under disability by a litigation guardian. O. Reg. 69/95, s. 2.

Substitute Decisions Act Applications

(2) Despite subrule (1), an application under the Substitute Decisions Act, 1992 may be commenced, continued and defended without the appointment of a litigation guardian for the respondent in respect of whom the application is made, unless the court orders otherwise. O. Reg. 69/95, s. 2.

Previously Appointed Committees

(3) A committee named by order or statute before April 3, 1995 is the litigation guardian of the person in respect of whom the committee was named, and shall be referred to as the litigation guardian for all purposes. O. Reg. 377/95, s. 2.

(4) Subrule (3) also applies to the Public Guardian and Trustee acting under an order made under subsection 72 (1) or (2) of the Mental Health Act as it read before April 3, 1995. O. Reg. 69/95, s. 2.

LITIGATION GUARDIAN FOR PLAINTIFF OR APPLICANT

Court Appointment Unnecessary

7.02 (1) Any person who is not under disability may act, without being appointed by the court, as litigation guardian for a plaintiff or applicant who is under disability, subject to subrule (1.1). O. Reg. 69/95, s. 3 (1).

Mentally Incapable Person or Absentee

(1.1) Unless the court orders otherwise, where a plaintiff or applicant,

(a) is mentally incapable and has a guardian with authority to act as litigation guardian in the proceeding, the guardian shall act as litigation guardian;

(b) is mentally incapable and does not have a guardian with authority to act as litigation guardian in the proceeding, but has an attorney under a power of attorney with that authority, the attorney shall act as litigation guardian;

(c) is an absentee and a committee of his or her estate has been appointed under the Absentees Act, the committee shall act as litigation guardian;

(d) is a person in respect of whom an order was made under subsection 72 (1) or (2) of the Mental Health Act as it read before April 3, 1995, the Public Guardian and Trustee shall act as litigation guardian. O. Reg. 69/95, s. 3 (1).

Affidavit to be Filed

(2) No person except the Children's Lawyer or the Public Guardian and Trustee shall act as litigation guardian for a plaintiff or applicant who is under disability until the person has filed an affidavit in which the person,

(a) consents to act as litigation guardian in the proceeding;

(b) confirms that he or she has given written authority to a named lawyer to act in the proceeding;

(c) provides evidence concerning the nature and extent of the disability;

(d) in the case of a minor, states the minor's birth date;

(e) states whether he or she and the person under disability are ordinarily resident in Ontario;

(f) sets out his or her relationship, if any, to the person under disability;

(g) states that he or she has no interest in the proceeding adverse to that of the person under disability; and

(h) acknowledges that he or she has been informed of his or her liability to pay personally any costs awarded against him or her or against the person under disability. O. Reg. 14/04, s. 7.

(3) Revoked: O. Reg. 14/04, s. 7.

LITIGATION GUARDIAN FOR DEFENDANT OR RESPONDENT

Generally must be Appointed by Court

7.03 (1) No person shall act as a litigation guardian for a defendant or respondent who is under disability until appointed by the court, except as provided in subrule (2), (2.1) or (3). R.R.O. 1990, Reg. 194, r. 7.03 (1); O. Reg. 69/95, s. 4 (1).

Where Minor Interested in Estate or Trust

(2) Where a proceeding is against a minor in respect of the minor's interest in an estate or trust, the Children's Lawyer shall act as the litigation guardian of the minor defendant or respondent, unless the court orders otherwise. R.R.O. 1990, Reg. 194, r. 7.03 (2); O. Reg. 69/95, s. 19.

Mentally Incapable Person or Absentee

(2.1) Unless the court orders otherwise, where a proceeding is against,

(a) a mentally incapable person who has a guardian with authority to act as litigation guardian in the proceeding, the guardian shall act as litigation guardian;

(b) a mentally incapable person who does not have a guardian with authority to act as litigation guardian in the proceeding but has an attorney under a power of attorney with that authority, the attorney shall act as litigation guardian;

(c) an absentee, and a committee of his or her estate has been appointed under the Absentees Act, the committee shall act as litigation guardian;

(d) a person in respect of whom an order has been made under subsection 72 (1) or (2) of the Mental Health Act as it read before April 3, 1995, the Public Guardian and Trustee shall act as litigation guardian. O. Reg. 69/95, s. 4 (2).

Affidavit by Guardian or Attorney

(2.2) A person who has authority under subrule (2.1) to act as litigation guardian shall, before acting in that capacity in a proceeding, file an affidavit containing the information referred to in subrule (10). O. Reg. 14/04, s. 8.

(2.3) Revoked: O. Reg. 14/04, s. 8.

Defending Counterclaim

(3) A litigation guardian for a plaintiff may defend a counterclaim without being appointed by the court. R.R.O. 1990, Reg. 194, r. 7.03 (3).

Motion by Person Seeking to be Litigation Guardian

(4) A person who seeks to be the litigation guardian of a defendant or respondent under disability shall move to be appointed by the court before acting as litigation guardian. R.R.O. 1990, Reg. 194, r. 7.03 (4).

Motion by Plaintiff or Applicant to Appoint Litigation Guardian

(5) Where a defendant or respondent under disability has been served with an originating process and no motion has been made under subrule (4) for the appointment of a litigation guardian, a plaintiff or applicant, before taking any further step in the proceeding, shall move for an order

appointing a litigation guardian for the party under disability. R.R.O. 1990, Reg. 194, r. 7.03 (5).

(6) At least ten days before moving for the appointment of a litigation guardian, a plaintiff or applicant shall serve a request for appointment of litigation guardian (Form 7A) on the party under disability personally or by an alternative to personal service under rule 16.03. R.R.O. 1990, Reg. 194, r. 7.03 (6).

(7) The request may be served on the party under disability with the originating process. R.R.O. 1990, Reg. 194, r. 7.03 (7).

(8) A motion for the appointment of a litigation guardian may be made without notice to the party under disability. R.R.O. 1990, Reg. 194, r. 7.03 (8).

(9) A plaintiff or applicant who moves to appoint the Children's Lawyer or the Public Guardian and Trustee as the litigation guardian shall serve the notice of motion and the material required by subrule (10) on the Children's Lawyer or the Public Guardian and Trustee. R.R.O. 1990, Reg. 194, r. 7.03 (9); O. Reg. 69/95, ss. 19, 20.

Evidence on Motion to Appoint

(10) A person who moves for the appointment of a litigation guardian shall provide evidence on the motion concerning,

(a) the nature of the proceeding;

(b) the date on which the cause of action arose and the date on which the proceeding was commenced;

(c) service on the party under disability of the originating process and the request for appointment of litigation guardian;

(d) the nature and extent of the disability;

(e) in the case of a minor, the minor's birth date;

(f) whether the person under disability ordinarily resides in Ontario and, except where the proposed litigation guardian is the Children's Lawyer or the Public Guardian and Trustee, evidence,

(g) concerning the relationship, if any, of the proposed litigation guardian to the party under disability;

(h) whether the proposed litigation guardian ordinarily resides in Ontario;

(i) that the proposed litigation guardian,

(i) consents to act as litigation guardian in the proceeding,

(ii) is a proper person to be appointed,

(iii) has no interest in the proceeding adverse to that of the party under disability, and

(iv) acknowledges having been informed that he or she may incur costs that may not be recovered from another party. R.R.O. 1990, Reg. 194, r. 7.03 (10); O. Reg. 69/95, ss. 19, 20.

REPRESENTATION OF PERSONS UNDER DISABILITY

Litigation guardian for party

7.04 (1) Unless there is some other proper person willing and able to act as litigation guardian for a party under disability, the court shall appoint,

(a) the Children's Lawyer, if the party is a minor;

(b) the Public Guardian and Trustee, if the party is mentally incapable within the meaning of section 6 or 45 of the Substitute Decisions Act, 1992 in respect of an issue in the proceeding and there is no guardian or attorney under a power of attorney with authority to act as litigation guardian;

(c) either of them, if clauses (a) and (b) both apply to the party. O. Reg. 69/95, s. 5.

Legal representative for minor who is not a party

(2) Where, in the opinion of the court, the interests of a minor who is not a party require separate representation in a proceeding, the court may request and may by order authorize the Children's Lawyer, or some other proper person who is willing and able to act, to act as the person's legal representative. O. Reg. 69/95, s. 5.

Litigation guardian for incapable person who is not a party

(3) Where, in the opinion of the court, the interests of a mentally incapable person who is not a minor and not a party require separate representation in a proceeding, the court may appoint as the mentally incapable person's litigation guardian the Public Guardian and Trustee or some other proper person who is willing and able to act. O. Reg. 69/95, s. 5.

POWERS AND DUTIES OF LITIGATION GUARDIAN

7.05 (1) Where a party is under disability, anything that a party in a proceeding is required or authorized to do may be done by the party's litigation guardian. R.R.O. 1990, Reg. 194, r. 7.05 (1); O. Reg. 69/95, s. 18.

(2) A litigation guardian shall diligently attend to the interests of the person under disability and take all steps necessary for the protection of those interests, including the commencement and conduct of a counterclaim, crossclaim or third party claim. R.R.O. 1990, Reg. 194, r. 7.05 (2); O. Reg. 69/95, s. 18.

(3) A litigation guardian other than the Children's Lawyer or the Public Guardian and Trustee shall be represented by a lawyer and shall instruct the lawyer in the conduct of the proceeding. R.R.O. 1990, Reg. 194, r. 7.05 (3); O. Reg. 69/95, ss. 18-20; O. Reg. 575/07, s. 1.

REMOVAL OR SUBSTITUTION OF LITIGATION GUARDIAN

7.06 (1) Where, in the course of a proceeding,

(a) a minor for whom a litigation guardian has been acting reaches the age of majority, the minor or the litigation guardian may, on filing an affidavit stating that the minor has reached the age of majority, obtain from the registrar an order to continue (Form 7B) authorizing the minor to continue the proceeding without the litigation guardian;

(b) a party under any other disability for whom a litigation guardian has been acting ceases to be under disability, the party or the litigation guardian may move without notice for an order to continue the proceeding without the litigation guardian,

and the order shall be served forthwith on every other party and on the litigation guardian. R.R.O. 1990, Reg. 194, r. 7.06 (1); O. Reg. 69/95, s. 18.

(2) Where it appears to the court that a litigation guardian is not acting in the best interests of the party under disability, the court may substitute the Children's Lawyer, the Public Guardian and Trustee or any other person as litigation guardian. R.R.O. 1990, Reg. 194, r. 7.06 (2); O. Reg. 69/95, ss. 19, 20.

NOTING PARTY UNDER DISABILITY IN DEFAULT

7.07 (1) If a party to an action is under a disability, the party may be noted in default under rule 19.01 only with leave of a judge. O. Reg. 19/03, s. 2.

(2) Notice of a motion for leave under subrule (1) shall be served,

(a) on the litigation guardian of the party under disability; and

(b) on the Children's Lawyer, unless,

(i) the Public Guardian and Trustee is the litigation guardian, or

(ii) a judge orders otherwise. R.R.O. 1990, Reg. 194, r. 7.07 (2); O. Reg. 69/95, ss. 18-20.

DISCONTINUANCE BY OR AGAINST PARTY UNDER DISABILITY

7.07.1 (1) If a party to an action is under a disability, the action may be discontinued by or against the party under rule 23.01 only with leave of a judge. O. Reg. 19/03, s. 3.

(2) Notice of a motion for leave under subrule (1) shall be served,

(a) on the litigation guardian of the party under disability; and

(b) on the Children's Lawyer, unless,

(i) the Public Guardian and Trustee is the litigation guardian, or

(ii) a judge orders otherwise. O. Reg. 19/03, s. 3.

APPROVAL OF SETTLEMENT

Settlement Requires Judge's Approval

7.08 (1) No settlement of a claim made by or against a person under disability, whether or not a proceeding has been commenced in respect of the claim, is binding on the person without the approval of a judge. R.R.O. 1990, Reg. 194, r. 7.08 (1).

(2) Judgment may not be obtained on consent in favour of or against a party under disability without the approval of a judge. R.R.O. 1990, Reg. 194, r. 7.08 (2).

Where no Proceeding Commenced

(3) Where an agreement for the settlement of a claim made by or against a person under disability is reached before a proceeding is commenced in respect of the claim, approval of a judge shall be obtained on an application. R.R.O. 1990, Reg. 194, r. 7.08 (3).

Material Required for Approval

(4) On a motion or application for the approval of a judge under this rule, there shall be served and filed with the notice of motion or notice of application,

(a) an affidavit of the litigation guardian setting out the material facts and the reasons supporting the proposed settlement and the position of the litigation guardian in respect of the settlement;

(b) an affidavit of the lawyer acting for the litigation guardian setting out the lawyer's position in respect of the proposed settlement;

(c) where the person under disability is a minor who is over the age of sixteen years, the minor's consent in writing, unless the judge orders otherwise; and

(d) a copy of the proposed minutes of settlement. R.R.O. 1990, Reg. 194, r. 7.08 (4); O. Reg. 69/95, s. 18; O. Reg. 575/07, s. 10.

Notice to Children's Lawyer or Public Guardian and Trustee

(5) On a motion or application for the approval of a judge under this rule, the judge may direct that the material referred to in subrule (4) be served on the Children's Lawyer or on the Public Guardian and Trustee as the litigation guardian of the party under disability and may direct the Children's Lawyer or the Public Guardian and Trustee, as the case may be, to make an oral or written report stating any objections he or she has to the proposed settlement and making recommendations, with reasons, in connection with the proposed settlement. R.R.O. 1990, Reg. 194, r. 7.08 (5); O. Reg. 69/95, ss. 18-20.

MONEY TO BE PAID INTO COURT

7.09 (1) Any money payable to a person under disability under an order or a settlement shall be paid into court, unless a judge orders otherwise. R.R.O. 1990, Reg. 194, r. 7.09 (1).

(2) Any money paid to the Children's Lawyer on behalf of a person under disability shall be paid into court, unless a judge orders otherwise. R.R.O. 1990, Reg. 194, r. 7.09 (2); O. Reg. 69/95, s. 19.

2. ***Children's Law Reform Act*, R.S.O 1990, Chapter C.12. The full statute can be found at: http://www.eaws.gov.on.ca/html/statutes/english/elaws_statutes_90c12_e.htm**

Guardianship

Appointment of guardian

47. (1) Upon application by a child's parent or by any other person, on notice to the Children's Lawyer, a court may appoint a guardian of the child's property. 2001, c. 9, Sched. B, s. 4 (1).

Responsibility of guardian

(2) A guardian of the property of a child has charge of and is responsible for the care and management of the property of the child. R.S.O. 1990, c. C.12, s. 47 (2).

Parents and joint guardians

Parents as guardians

48. (1) As between themselves and subject to any court order or any agreement between them, the parents of a child are equally entitled to be appointed by a court as guardians of the property of the child. R.S.O. 1990, c. C.12, s. 48 (1).

Parent and other person

(2) As between a parent of a child and a person who is not a parent of the child, the parent has a preferential entitlement to be appointed by a court as a guardian of the property of the child. R.S.O. 1990, c. C.12, s. 48 (2).

More than one guardian

(3) A court may appoint more than one guardian of the property of a child. R.S.O. 1990, c. C.12, s. 48 (3).

Guardians jointly responsible

(4) Where more than one guardian is appointed of the property of a child, the guardians are jointly responsible for the care and management of the property of the child. R.S.O. 1990, c. C.12, s. 48 (4).

Criteria

49. In deciding an application for the appointment of a guardian of the property of a child, the court shall consider all the circumstances, including,

(a) the ability of the applicant to manage the property of the child;

(b) the merits of the plan proposed by the applicant for the care and management of the property of the child; and

(c) the views and preferences of the child, where such views and preferences can reasonably be ascertained. R.S.O. 1990, c. C.12, s. 49; 2001, c. 9, Sched. B, s. 4 (2).

Effect of appointment

50. The appointment of a guardian by a court under this Part has effect in all parts of Ontario. R.S.O. 1990, c. C.12, s. 50.

Payment of debt due to child if no guardian

51. (1) If no guardian of a child's property has been appointed, a person who is under a duty to pay money or deliver personal property to the child

discharges that duty, to the extent of the amount paid or the value of the personal property delivered, subject to subsection (1.1), by paying money or delivering personal property to,

(a) the child, if the child has a legal obligation to support another person;

(b) a parent with whom the child resides; or

(c) a person who has lawful custody of the child. 2001, c. 9, Sched. B, s. 4 (3).

Same

(1.1) The total of the amount of money paid and the value of personal property delivered under subsection (1) shall not exceed the prescribed amount or, if no amount is prescribed, $10,000. 2001, c. 9, Sched. B, s. 4 (3).

Money payable under judgment

(2) Subsection (1) does not apply in respect of money payable under a judgment or order of a court. R.S.O. 1990, c. C.12, s. 51 (2).

Receipt for payment

(3) A receipt or discharge for money or personal property not in excess of the amount or value set out in subsection (1) received for a child by a parent with whom the child resides or a person who has lawful custody of the child has the same validity as if a court had appointed the parent or the person as a guardian of the property of the child. R.S.O. 1990, c. C.12, s. 51 (3).

Responsibility for money or property

(4) A parent with whom a child resides or a person who has lawful custody of a child who receives and holds money or personal property referred to in subsection (1) has the responsibility of a guardian for the care and management of the money or personal property. R.S.O. 1990, c. C.12, s. 51 (4).

Regulations

(5) The Lieutenant Governor in Council may, by regulation, prescribe an amount for the purpose of subsection (1.1). 2001, c. 9, Sched. B, s. 4 (4).

Accounts

52. A guardian of the property of a child may be required to account or may voluntarily pass the accounts in respect of the care and management of the property of the child in the same manner as a trustee under a will may be required to account or may pass the accounts in respect of the trusteeship. R.S.O. 1990, c. C.12, s. 52.

Transfer of property to child

53. A guardian of the property of a child shall transfer to the child all property of the child in the care of the guardian when the child attains the age of eighteen years. R.S.O. 1990, c. C.12, s. 53.

Management fees and expenses

54. A guardian of the property of a child is entitled to payment of a reasonable amount for fees for and expenses of management of the property of the child. R.S.O. 1990, c. C.12, s. 54.

Bond by guardian

55. (1) A court that appoints a guardian of the property of a child shall require the guardian to post a bond, with or without sureties, payable to the child in such amount as the court considers appropriate in respect of the care and management of the property of the child. R.S.O. 1990, c. C.12, s. 55 (1).

Where parent appointed guardian

(2) Subsection (1) does not apply where the court appoints a parent of a child as guardian of the property of the child and the court is of the opinion that it is appropriate not to require the parent to post a bond. R.S.O. 1990, c. C.12, s. 55 (2).

Where child has support obligation

56. Upon application by a child who has a legal obligation to support another person, the court that appointed a guardian of the property of the child or a co-ordinate court by order shall end the guardianship for the child. R.S.O. 1990, c. C.12, s. 56.

Removal and resignation of guardian

Removal

57. (1) A guardian of the property of a child may be removed by a court for the same reasons for which a trustee may be removed. R.S.O. 1990, c. C.12, s. 57 (1).

Resignation

(2) A guardian of the property of a child, with the permission of a court, may resign as guardian upon such conditions as the court considers appropriate. R.S.O. 1990, c. C.12, s. 57 (2).

Notice to Estate Registrar for Ontario

58. A notice of every application to a court for appointment of a guardian of the property of a child shall be transmitted by the clerk of the court to the Estate Registrar for Ontario. R.S.O. 1990, c. C.12, s. 58; 1993, c. 27, Sched.; 2009, c. 11, s. 17.

3. ***Substitute Decisions Act*, 1992 S.O. 1992, Chapter 30. The full act can be found at:**

http://www.elaws.gov.on.ca/html/statutes/english/elaws_statutes_92s30_e.htm

Statutory Guardians of Property

P.G.T. as statutory guardian

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

Assessment of capacity for statutory guardianship

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

Form of request

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

(a) the person requesting the assessment has reason to believe that the other person may be incapable of managing property;

(b) the person requesting the assessment has made reasonable inquiries and has no knowledge of the existence of any attorney under a continuing power of attorney that gives the attorney authority over all of the other person's property; and

(c) the person requesting the assessment has made reasonable inquiries and has no knowledge of any spouse, partner or relative of the other person who intends to make an application under section 22 for the appointment of a guardian of property for the other person. 1996, c. 2, s. 10.

Certificate of incapacity

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

Copies

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

Statutory guardianship

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

Information to be given

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

(a) the Public Guardian and Trustee has become the person's statutory guardian of property; and

(b) the person is entitled to apply to the Consent and Capacity Board for a review of the assessor's finding that the person is incapable of managing property. 1996, c. 2, s. 10.

Court-Appointed Guardians of Property

Court appointment of guardian of property

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

Same

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

Prohibition

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

(a) does not require the court to find the person to be incapable of managing property; and

(b) is less restrictive of the person's decision-making rights than the appointment of a guardian. 1992, c. 30, s. 22 (3).

Court-Appointed Guardians of the Person

Court appointment of guardian of the person

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

Prohibition

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

(a) does not require the court to find the person to be incapable of personal care; and

(b) is less restrictive of the person's decision-making rights than the appointment of a guardian. 1992, c. 30, s. 55 (2).

4. *Estates Act*, RSO 1990, c E.21
http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90e21_e.htm

Subsection 49(8) of the *Estates Act*

Notice of taking accounts to be served on Public Guardian and Trustee

(8) Where by the terms of a will or other instrument in writing under which such an executor, administrator or trustee acts, real or personal property or any right or interest therein, or proceeds therefrom have heretofore been given, or are hereafter to be vested in any person, executor, administrator or trustee for any religious, educational, charitable or other purpose, or are to be applied by them to or for any such purpose, notice of taking the accounts shall be served upon the Public Guardian and Trustee. R.S.O. 1990, c. E.21, s. 49 (8).