

# **Adult Capacity and Decision-making Act**

CHAPTER 4 OF THE ACTS OF 2017



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## CHAPTER 4 OF THE ACTS OF 2017

# An Act Respecting Representative Decision-making

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WHEREAS an adult is entitled to respect for the adult's dignity and autonomy;

AND WHEREAS an adult is presumed to have capacity, unless the contrary is clearly demonstrated;

AND WHEREAS any action taken or decision made under the authority granted to any person should be undertaken in the least restrictive and least intrusive manner, having regard to the adult's rights, freedoms, dignity and autonomy:

#### Short title

**1** This Act may be cited as the *Adult Capacity and Decision-making Act*. 2017, c. 4, s. 1.

#### Purpose of Act

**2** The purpose of this Act is to

(a) recognize that adults may experience an impairment of their capacity;

(b) provide a fair and respectful legal framework for protecting the safety and security of adults whose capacity is impaired and who may be made vulnerable thereby;

(c) promote the dignity, autonomy, independence, social inclusion and freedom of decision-making of adults who are the subject of this legislation; and

(d) ensure that the least restrictive and least intrusive supports and interventions are considered before an application is made or a representation order is granted under this Act. 2017, c. 4, s. 2.

#### Interpretation

**3** In this Act,

(a) "adult" means an individual who has reached the age of majority and, for the purpose of the making of an application under Section 5, includes an individual who will reach the age of majority within one year of the application being made;

(b) "assessor" means

(i) a medical practitioner as defined in the *Medical Act*,

(ii) an occupational therapist as defined in the *Occupational Therapists Act*,

(iii) a registered psychologist as defined in the *Psychologists Act*,

(iv) a registered nurse as defined in the *Registered Nurses Act* including, for greater certainty, a nurse practitioner as defined in that Act,

- (v) a social worker as defined in the *Social Workers Act*,  
and
- (vi) a licensed, practising member of any other health profession prescribed by the regulations,  
who is designated by or under the regulations as an assessor;
- (c) “aversive stimulus” means an unpleasant event that is intended to decrease the probability of a behaviour when it is presented to an adult as a consequence of the behaviour;
- (d) “capacity” means the ability, with or without support, to
  - (i) understand information relevant to making a decision,
  - (ii) appreciate the reasonably foreseeable consequences of making or not making a decision including, for greater certainty, the reasonably foreseeable consequences of the decision to be made;
- (e) “capacity assessment” means an assessment, conducted by an assessor, of the capacity of an individual;
- (f) “capacity assessment report” means a report prepared by an assessor respecting the conduct and results of a capacity assessment;
- (g) “care facility” means
  - (i) a hospital as defined in the *Hospitals Act*,
  - (ii) a psychiatric facility as defined in the *Involuntary Psychiatric Treatment Act*, and
  - (iii) a nursing home or residential care facility as defined in the *Homes for Special Care Act*;
- (h) “Court” means the Supreme Court of Nova Scotia;
- (i) “financial matter” means any matter relating to the property or finances of an adult and, without limiting the generality of the foregoing, includes
  - (i) the purchase, sale, disposition, encumbrance or transfer of personal property,
  - (ii) the purchase, sale, disposition, mortgage, encumbrance or transfer of real property,
  - (iii) the transfer of property held in trust by the adult, either solely or jointly with another, to the person beneficially entitled to it,
  - (iv) the exchange or partition of property or the giving or receipt of money for equality of exchange or partition,
  - (v) the granting or acceptance of a lease of real or personal property,
  - (vi) the giving of consent to a transfer or assignment of a lease,

- (vii) the surrender of a lease, with or without the acceptance of a new lease,
  - (viii) the acceptance of the surrender of a lease,
  - (ix) the receipt, deposit and investment of money,
  - (x) the drawing, acceptance and endorsement of bills of exchange and promissory notes,
  - (xi) the endorsement of bonds, debentures, coupons and other negotiable instruments and securities,
  - (xii) the assignment of choses in action,
  - (xiii) the giving or receipt of a notice on behalf of the adult that relates to the adult's property,
  - (xiv) the carrying on of the adult's trade or business,
  - (xv) the exercise of a power or the giving of the consent required for the exercise of a power vested in the adult,
  - (xvi) the exercise of a right or obligation to elect belonging to or imposed on the adult,
  - (xvii) the compromise or settlement of a debt owing by or to the adult,
  - (xviii) any other matter specified by the Court, and
  - (xix) any other matter prescribed by the regulations;
- (j) "foreign order" means an order made by a court or other body outside the Province that appoints a person having duties comparable to those of a representative;
- (k) "gift" includes a charitable contribution;
- (l) "health care" means any examination, procedure, service or treatment done for a therapeutic, preventative, palliative, diagnostic or other health-related purpose, and includes a course of health care or a care plan;
- (m) "Minister" means the Minister of Justice;
- (n) "personal care" includes nutrition, hydration, shelter, residence, clothing, hygiene, safety, comfort, recreation, social activities and support services;
- (o) "representation order" means an order of the Court made or continued under this Act appointing a representative for an adult;
- (p) "representation plan" means a plan that sets out the manner in which the representative for an adult is to manage the adult's well-being and interests in financial matters and includes the information prescribed by the regulations;
- (q) "representative" means a person appointed as a decision-making representative under this Act;

- (r) “spouse” means either of two individuals who
- (i) are married to each other and not living separate and apart, within the meaning of the *Divorce Act* (Canada), from each other,
  - (ii) are married to each other by a marriage that is voidable and has not been annulled by a declaration of nullity,
  - (iii) have entered into a form of marriage with each other that is void, if either or both of them believed that the marriage was valid when entering into it,
  - (iv) are domestic partners within the meaning of Section 52 of the *Vital Statistics Act*, or
  - (v) not being married to each other, have cohabited in a conjugal relationship with each other continuously for at least two years;
- (s) “support” means, in relation to an adult’s capacity, such forms of support as may be reasonably and practically available to assist the adult in making a decision, including peer support, communication and interpretive assistance, individual planning, coordination and referral for services and administrative assistance;
- (t) “well-being” includes the maximization of physical and mental health, personal autonomy, and social inclusion and participation. 2017, c. 4, s. 3.

### Principles

4 This Act is to be interpreted and administered in accordance with the following principles:

- (a) an adult is entitled to make his or her own decisions, unless the adult’s incapacity to do so is clearly demonstrated;
- (b) an adult is not incapable of making a decision merely because the adult makes or would make a decision that another adult would consider risky or unwise;
- (c) an adult is entitled to communicate by any means that enables the adult to be understood, and the means by which the adult communicates is not relevant to a determination of whether the adult has capacity; and
- (d) where an adult does not have the capacity to make a decision, the adult’s autonomy must be preserved by ensuring that the least restrictive and least intrusive form of representative decision making is provided that is likely to be effective to promote and protect the adult’s well-being and interests in financial matters. 2017, c. 4, s. 4.



## APPLICATION FOR REPRESENTATION ORDER

**Application**

- 5** (1) A person may apply to the Court for a representation order.
- (2) An application must include
- (a) subject to subsection (3), a capacity assessment report respecting the adult who is the subject of the application;
  - (b) a representation plan;
  - (c) a vulnerable sector check respecting each proposed representative and proposed alternative representative who is an individual;
  - (d) a supporting affidavit that includes the information prescribed by the regulations;
  - (e) evidence of the consent of each proposed representative or alternate representative to act as the representative or alternate representative for the adult, as the case may be; and
  - (f) any other documents or evidence prescribed by the Court.

(3) An application is not required to include a capacity assessment report if the adult who is the subject of the application refuses to undergo a capacity assessment as directed under Section 10 or is prevented from undergoing a capacity assessment.

(4) The notice of application must name all of the following persons as respondents to the application and the applicant shall serve or cause to be served the application on each of them in accordance with the *Nova Scotia Civil Procedure Rules*:

- (a) the adult who is the subject of the application;
- (b) any proposed representative or proposed alternate representative other than the applicant;
- (c) any existing representative or existing alternative representative other than the applicant;
- (d) any other person likely to be directly affected by the representation order, if granted;
- (e) any other person prescribed by the Court.

(5) Subject to subsection (6), the applicant shall send a copy of the notice of application to all of the following persons who reside in Canada unless the Court orders otherwise:

- (a) the adult's
  - (i) spouse, if any,

- (ii) parents, if alive,
- (iii) children who have reached the age of majority, if any, and
- (iv) siblings who have reached the age of majority, if any;
- (b) any guardians for the adult appointed under the *Incompetent Persons Act*;
- (c) any delegates appointed by a personal directive made by the adult;
- (d) any attorneys appointed by an enduring power of attorney made by the adult;
- (e) where the adult resides in a care facility, the director of the facility;
- (f) any other person to whom the Court directs the applicant to send a copy of the notice of application.

(6) The applicant is not required to send a copy of the notice of application to any person whose address cannot be found through reasonable diligence.

(7) A copy of the notice of application to be sent under subsection (5) must be sent by ordinary mail no fewer than 25 days before the date of the hearing of the application. 2017, c. 4, s. 5.

#### Notice of contest

6 (1) A person who is entitled to notice of the application under subsection 5(5), or any other interested person with leave of the court, may file a notice of contest.

(2) The deadline for filing a notice of contest under subsection (1) is the same as for a notice of contest filed by a respondent.

(3) A person who files a notice of contest under this Section is deemed to be a respondent to the application and is entitled to

- (a) a copy of any document filed with the Court in the proceeding; and
- (b) notice of all further steps in the proceeding. 2017, c. 4, s. 6.

#### Representation order

7 (1) Upon hearing the application, the Court may make an order appointing a representative for the adult who is the subject of the application if the Court is satisfied that the applicant has proven, on a balance of probabilities, that

- (a) the adult does not have capacity respecting the matters that are to be referred to in the order;
- (b) the adult needs or will need to make decisions about the matters that are to be referred to in the order;
- (c) any less intrusive and less restrictive measures available have been considered and would not likely be, or have been implemented and have not been, effective to protect and promote the adult's well-being and interests in financial matters; and
- (d) the adult is in need of a representative.

**(2)** When determining whether to make a representation order and the terms of any such order, the Court shall consider

- (a) the wishes of the adult, having regard to the adult's capacity respecting matters relating to the adult's well-being and financial matters;
- (b) the capacity assessment report respecting the adult;
- (c) any other evidence respecting the adult's capacity;
- (d) the representation plan;
- (e) any enduring power of attorney made by the adult;
- (f) any personal directive made by the adult;
- (g) the matters in respect of which the adult is likely to need to make decisions;
- (h) where the application requests that the representative be granted authority in respect of any of the adult's financial matters, the extent, nature and complexity of the adult's estate; and
- (i) any other matter or evidence the Court considers relevant.

**(3)** Where the application does not include a capacity assessment report, the Court may consider any evidence that the Court considers relevant to the adult's capacity and may, where the Court considers that the available evidence is sufficient for it to do so, determine whether to make a representation order.

**(4)** The Court may appoint a representative for an adult who is not ordinarily resident in the Province only if

- (a) the representation order applies only to the real property of the adult that is located in the Province; or
- (b) the Court is satisfied that exceptional circumstances make it appropriate to appoint a representative for the adult.

(5) Where a representation order is made in respect of an individual who has not yet reached the age of majority, the order does not take effect until the day on which the individual reaches that age. 2017, c. 4, s. 7.

**Representation order in urgent case**

**8 (1)** Where a person has reason to believe that

(a) an adult is or will be in immediate danger of death or serious physical or mental harm if a representation order is not made; and

(b) there exist exigent circumstances that make it not practical to make an application under Section 5,

the person may apply to the Court under this Section for a representation order.

(2) On an application under this Section, the Court may, where satisfied that the urgency of the matter makes it appropriate to do so, dispense with or modify any requirement of this Act or the regulations that would otherwise apply, including any requirement respecting

(a) the documents or evidence to be filed with the application;

(b) the service of the application or sending of the notice of application; and

(c) the evidence that may be considered upon hearing the application.

(3) On an application under this Section, the Court may make an order appointing a representative for the adult who is the subject of the application if the Court is satisfied that the applicant has proven, on a balance of probabilities, the facts referred to in clauses 7(1)(a) to (d).

(4) In a representation order made under this Section, the Court shall specify a date, no later than 90 days after the date of the order, by which the order must be reviewed by the Court and after which the order expires unless it is extended under clause (5)(b).

(5) On a review of a representation order made under this Section, the Court may

(a) rescind the order;

(b) continue the order for up to six months, after which time the order expires; or

(c) proceed with the matter as an application under Section 5 if the requirements for an application under that Section have been met. 2017, c. 4, s. 8.

## CAPACITY ASSESSMENT

**When may be conducted**

**9** Subject to Sections 10 and 15, an assessor may conduct a capacity assessment only if the adult has not refused to undergo or continue with the capacity assessment and, in the assessor's opinion,

(a) where the adult appears to be capable of consenting to the capacity assessment, the adult

(i) understands the purpose of the capacity assessment and that the adult has the right to refuse to undergo or continue with the capacity assessment, and

(ii) has consented to the capacity assessment; or

(b) where the adult does not appear to be capable of consenting to the capacity assessment, there are reasonable grounds to believe the adult is incapable of making decisions about any matter to be assessed. 2017, c. 4, s. 9.

**Court-ordered capacity assessment**

**10 (1)** The Court may order a capacity assessment of an adult if

(a) the adult's capacity to make decisions is at issue in a proceeding under the Act; and

(b) there are reasonable grounds to believe that the adult is incapable of making decisions about any matter.

**(2)** An order under subsection (1) may direct an adult whose capacity is at issue to undergo the capacity assessment and to

(a) permit an assessor and any person assisting the assessor to enter the adult's place of residence to conduct the capacity assessment; or

(b) attend at another place at any time specified in the order to undergo the capacity assessment. 2017, c. 4, s. 10.

**Medical examination**

**11** Before conducting a capacity assessment of an adult, an assessor must determine whether the adult requires a medical examination before the capacity assessment to identify any medical condition, including any temporary or reversible condition, that may affect the adult's capacity in respect of any matter to be assessed. 2017, c. 4, s. 11.

**Limitation**

**12 (1)** Before conducting a capacity assessment, an assessor must ensure that the assessor has been advised of the reasons for which the capacity assessment was requested and be provided with a description of any circumstances or events that gave rise to the request.

(2) An assessor may assess an adult's capacity in respect of a matter only if the assessor is satisfied that a capacity assessment in respect of the matter is necessary. 2017, c. 4, s. 12.

### Scope

13 When conducting a capacity assessment, an assessor shall determine whether the adult being assessed is capable of making decisions in respect of any matter being assessed and shall take into account observational information and collateral information gathered from other sources. 2017, c. 4, s. 13.

### Refusal to undergo or continue

14 Subject to Section 15, where an adult refuses to undergo or continue with a capacity assessment at any point during the capacity assessment, the assessor shall

- (a) leave the adult's residence without delay, if the assessor is at the adult's residence;
- (b) take no further steps with respect to the in-person capacity assessment other than to note on the capacity assessment report that the adult refused to undergo or continue with the capacity assessment; and
- (c) notify the person who requested the capacity assessment that the adult refused to undergo or continue with the capacity assessment. 2017, c. 4, s. 14.

### Assessment without adult present

15 (1) A capacity assessment, or any part of it, may be conducted without the presence of the adult being assessed based on observational information and collateral information gathered from other sources if

- (a) the adult refuses, in full or in part, to undergo or continue with a capacity assessment;
- (b) the adult cannot reasonably be assessed; or
- (c) the adult is not reasonably able to participate in the capacity assessment.

(2) An assessor may conduct a capacity assessment without the presence of the adult being assessed only if the assessor is satisfied that the capacity assessment can be completed accurately using the information available. 2017, c. 4, s. 15.

### Collection of information by assessor

16 (1) In this Section,

- (a) "information" includes personal information as defined in the *Freedom of Information and Protection of Privacy Act*, personal health information as defined in the *Personal Health Information Act*

and personal information as defined in the *Personal Information Protection and Electronic Documents Act* (Canada);

(b) “person” includes a partnership, an unincorporated association, a public body as defined in the *Freedom of Information and Protection of Privacy Act*, a custodian as defined in the *Personal Health Information Act* and an organization as defined in the *Personal Information Protection and Electronic Documents Act* (Canada).

(2) An assessor conducting a capacity assessment of an adult may collect from a person any information in relation to the adult, other than financial information, that is relevant to the conduct of the capacity assessment.

(3) A person shall, upon request of the assessor, disclose to the assessor the requested information in relation to the adult.

(4) Where the assessor is of the opinion that access to financial information about an adult being assessed is necessary for the capacity assessment, the applicant who made the application for which the capacity assessment is required may apply to the Court for an order under subsection (5).

(5) Upon application, the Court may make an order directing a person to provide financial information about the adult to the assessor for the purpose of a capacity assessment.

(6) Where the assessor collects information in relation to an adult under this Section, the assessor shall

(a) use and disclose the information only for the purpose of conducting a capacity assessment of the adult; and

(b) take reasonable care to ensure the information is kept secure from unauthorized use or disclosure.

(7) The assessor shall not attempt to collect any information in relation to the adult other than the information that the assessor is entitled to collect under this Section. 2017, c. 4, s. 16.

#### **Capacity assessment report**

17 (1) Upon completing a capacity assessment of an adult, an assessor must complete a capacity assessment report.

(2) The assessor shall advise the adult of the results of the capacity assessment, including the determination of the adult’s capacity or incapacity, and offer the adult a copy of the capacity assessment report. 2017, c. 4, s. 17.

#### **Content of report when adult found to lack capacity**

18 Where an assessor is of the opinion that the adult being assessed does not have capacity respecting any matter being assessed, the assessor shall

(a) consider whether the adult is likely to regain some or all of the adult's capacity respecting the matter and, if so, indicate that opinion in the capacity assessment report;

(b) where the assessor believes that the adult is likely to regain some or all of the adult's capacity respecting the matter, indicate in the capacity assessment report when the adult is likely to regain capacity, if the assessor is able to reasonably estimate a period within which this will occur; and

(c) indicate in the capacity assessment report what forms of support or assistance, if any, would help the adult to manage the adult's needs successfully with regard to the matter being assessed, without the need for a representative for the adult being appointed. 2017, c. 4, s. 18.

#### **Required content of report and deadline**

**19 (1)** A capacity assessment report must be in the form prescribed by the Minister and include

(a) confirmation that the right of the adult being assessed to refuse to undergo or continue with the capacity assessment was explained to the adult;

(b) the results of any medical evaluation the assessor required under Section 11;

(c) a recommendation as to whether, if the Court appoints a representative for the adult, a further capacity assessment should be conducted at a later date and, if so, within what period;

(d) any preference indicated by the adult as to who should, or should not, be appointed as the representative for the adult.

**(2)** A capacity assessment report filed for the purpose of any application under this Act must be dated no later than six months before the application is filed with the Court, unless the Court orders otherwise. 2017, c. 4, s. 19.

#### **Reliance on report**

**20** A capacity assessment report filed in support of an application under this Act may be relied on for the purpose of a later application in respect of the same adult if

(a) the capacity assessment report is dated no earlier than six months before the date the later application is filed, unless the court orders otherwise; and

(b) where the applicant in the later application is a different person than applicant in the earlier application, the applicant in the earlier application is named as a respondent in the later application. 2017, c. 4, s. 20.



## APPOINTMENT OF REPRESENTATIVE

**Who may be appointed**

**21** (1) The following persons are eligible to be appointed as a representative:

- (a) an individual;
- (b) subject to subsection (2), a trust company as defined in the *Trust and Loan Companies Act*;
- (c) the Public Trustee.

(2) A trust company may only be appointed as the representative for an adult in respect of the adult's financial matters.

(3) The Court may appoint as the representative for an adult any eligible person who

- (a) where the person is an individual, has reached the age of majority;
- (b) consents to act as representative.

(4) When appointing the representative for an adult, the Court shall satisfy itself that the person being appointed

- (a) will act in accordance with the duties of a representative under this Act; and
- (b) is suitable to act as the adult's representative, having regard to
  - (i) the views and wishes of the adult,
  - (ii) the relationship between the adult and the person to the extent that it appears relevant to the ability of the person to discharge the person's duties as representative,
  - (iii) the apparent ability of the person to effectively exercise authority concerning the matters to be assigned to the authority of the representative,
  - (iv) any circumstance, including the person's place of residence, that could impair the Court's ability to effectively supervise the person's discharge of the duties of a representative,
  - (v) any matter prescribed by the regulations, and
  - (vi) any other matter the Court considers relevant.

(5) When assessing whether a proposed representative will act in accordance with the duties of a representative under this Act and is suitable to act as the representative for an adult, the Court may consider evidence of any matter,

including a potential conflict of interest, that might create a substantial risk that the proposed representative would not act in accordance with the duties of a representative under this Act.

(6) For the purpose of subsection (5), a proposed representative does not have a potential conflict of interest by reason only that the proposed representative is a relative or potential beneficiary of the adult. 2017, c. 4, s. 21.

#### **When proposed representative unsatisfactory**

22 Where the Court is satisfied that it is appropriate to make a representation order but is not satisfied that the proposed representative satisfies the requirements of Section 21, the Court may appoint as representative any other person who satisfies the requirements of that Section. 2017, c. 4, s. 22.

#### **Multiple representatives**

23 (1) The Court may appoint more than one representative for an adult.

(2) A representation order appointing more than one representative for an adult may

(a) grant to a representative the exclusive authority to act and make decisions in respect of a matter specified in the order; and

(b) provide that the representatives are to act jointly or separately in respect of a matter specified in the order.

(3) Where two or more representatives are appointed to act jointly, the representation order must establish a dispute resolution process to resolve any conflict that may arise between the representatives respecting the exercise of their authority under the order.

(4) Except as otherwise provided under subsection (2), where more than one representative is appointed for an adult, the representatives may act and make decisions separately respecting the matters specified in the representation order.

(5) Where two or more representatives are appointed to act separately respecting matters specified in the representation order and one of them

(a) dies;

(b) resigns;

(c) becomes incapable of acting or unwilling to act as representative; or

(d) after reasonable inquiries by another representative, is unable to be found,

the remaining representatives may apply to the Court for approval to assume the decision-making authority previously exercised by the representative who has died,

resigned or became incapable of acting or unwilling to act as representative or who is unable to be found.

- (6) Where two or more representatives are appointed to act jointly and one of them
- (a) dies;
  - (b) resigns;
  - (c) becomes incapable of acting or unwilling to act as representative; or
  - (d) after reasonable inquiries by another representative, is unable to be found,

the remaining representatives may continue to act. 2017, c. 4, s. 23.

#### Alternative representative

24 (1) In this Section, “previous representative” means the representative for whom a person is appointed as alternative representative in the representation order.

(2) The Court may appoint an alternative representative for an adult if

- (a) the proposed alternative representative has given written consent to the appointment; and
- (b) the Court is satisfied that the persons to whom the notice of application is required to be sent have had sufficient notice of the proposed alternative representative’s willingness to act as an alternative representative.

(3) Sections 21, 22 and 23 apply *mutatis mutandis* to the appointment of an alternative representative.

(4) Subject to the terms of the representation order, where an alternative representative is appointed, the alternative representative shall act as representative without further proceedings

- (a) on becoming aware of
  - (i) the death or resignation of the previous representative,
  - (ii) the appointment of a representative for the previous representative, or
  - (iii) the coming into effect, because of the previous representative’s incapacity, of a personal directive or enduring power of attorney made by the previous representative; or
- (b) if authorized in writing by the previous representative, during the period set out in the authorization.

(5) An authorization referred to in clause (4)(b) must indicate the period during which the alternative representative may act as representative and terminates upon the earlier of

- (a) the end of the period specified in the authorization; and
- (b) the revocation in writing of the authorization by the previous representative.

(6) Where an alternative representative acts as representative because of an event referred to in clause (4)(a), the alternative representative shall notify the Court in writing and provide evidence of the event to the Court.

(7) Where an alternative representative acts as representative, the alternative representative has the same authority and is subject to the same duties as the previous representative. 2017, c. 4, s. 24.

#### **Period of appointment**

25 Subject to subsection 8(5), a representative may be appointed indefinitely or for such period as may be specified in the representation order. 2017, c. 4, s. 25.

#### **Resignation**

26 (1) A representative for an adult may resign if, in respect of all matters under the representative's authority,

- (a) the representative is unable or unwilling to continue to act as representative for the adult;
- (b) the representative was appointed to act jointly with one or more other persons and at least one of the other persons remains appointed as representative for the adult; or
- (c) a person has been and remains appointed as an alternative representative for the adult.

(2) Where a representative for an adult resigns, the representative shall provide written notice of the resignation to

- (a) the Court;
- (b) the adult; and
- (c) the remaining representative, the alternative representative or, where there is no remaining representative or alternative representative, the Public Trustee. 2017, c. 4, s. 26.

#### **AUTHORITY AND DUTY OF REPRESENTATIVE**

##### **Authority**

27 (1) The authority granted to a representative by the Court must be specified in the representation order.

(2) The Court may grant the representative for an adult only such authority as the Court is satisfied

- (a) relates to a matter in respect of which the adult does not have capacity;
- (b) is not subject to the authority of an attorney under an enduring power of attorney or a delegate under a personal directive;
- (c) is necessary to make decisions about the matters specified in the representation order; and
- (d) will result in the most effective, but the least restrictive and intrusive, form of assistance and support that is required to promote and protect the adult's well-being and interests in financial matters.

(3) When determining the least restrictive and least intrusive form of support that is reasonably and practically available to assist the adult in making a decision, the Court shall consider the fundamental rights, freedoms, dignity and autonomy of the adult.

(4) The Court may grant the representative for an adult authority to act and make decisions respecting any one or more of the following matters:

- (a) where, with whom and under what conditions the adult is to live, whether permanently or temporarily;
- (b) subject to subsection (5), with whom the adult may associate;
- (c) whether the adult is to participate in social and recreational activities and, where the adult is to participate in the activities, the nature and extent of the participation and any matters related to such participation;
- (d) whether the adult is to be employed and, where the adult is to be employed, the nature or type of employment, who is to employ the adult and any matters related to such employment;
- (e) whether the adult is to participate in any educational, vocational or other training and, where the adult is to participate in training, the nature and extent of the training and any matters related to such training;
- (f) whether the adult is to apply for any licence, permit, approval or other consent or authorization required by law;
- (g) whether to commence, continue, settle or defend any claim or proceeding that relates to the adult;
- (h) the adult's personal care and health care;
- (i) the financial matters of the adult; and
- (j) any other matter the Court considers appropriate.

(5) Where the Court grants the representative for an adult authority to act and make decisions respecting with whom the adult may associate, the representative may only exercise the authority to prevent the adult from associating with an individual if associating with the individual could seriously jeopardize the health and safety of the adult.

(6) The Court may grant the representative for an adult authority to permit the adult to open or maintain a deposit account in the adult's name at a bank or other financial institution, subject to any limits or conditions the Court considers appropriate.

(7) The Court may grant the representative for an adult authority to open or maintain an account for the adult at a care facility into which the representative may deposit money to be used for the incidental expenses incurred by the adult.

(8) The Court may only grant the representative for an adult authority to act and make decisions respecting all matters relating to the adult's person and estate if the Court is satisfied that the adult lacks capacity to make decisions respecting all matters enumerated in clauses (4)(a) to (j).

(9) For greater certainty, the Court may grant the representative for an adult authority to make a single decision.

(10) When making a representation order, the Court may impose any conditions or restrictions on the authority of the representative that the Court considers appropriate, including a requirement that any specified asset of the adult who is the subject of the order not be sold, encumbered, transferred or otherwise disposed of without the approval of the Court. 2017, c. 4, s. 27.

#### **Approval of representation plan**

**28** When making a representation order, the Court shall

- (a) approve the representation plan, subject to any variations the Court considers necessary; or
- (b) require the representative to submit an amended representation plan for approval within the time specified in the order. 2017, c. 4, s. 28.

#### **Specification of date of review**

**29 (1)** When making a representation order, the Court shall specify in the order a date by which the representative for the adult is to apply for the review of the order if

- (a) the capacity assessment report indicates that the adult's capacity is likely to improve; or
- (b) in any case where the capacity assessment report does not indicate that the adult's capacity is likely to improve, the Court considers it appropriate to do so.

(2) In deciding under clause (1)(b) whether to specify a date by which an application for review of a representation order made in respect of an adult must be made and in determining under clause (1)(a) or (b) the date by which such application must be made, the Court shall consider

- (a) the nature and extent of the incapacity of the adult;
- (b) the adult's need for support or assistance; and
- (c) the support or assistance that is or may become available to the adult. 2017, c. 4, s. 29.

### **Exercise of authority**

**30 (1)** The representative for an adult may take possession and control of any property, whether real or personal, in respect of which the representative has authority under a representation order.

(2) A representative for an adult who has authority to act and make decisions respecting the financial matters of an adult or who is otherwise expressly authorized to do so under a representation order may, in an instrument other than a will,

- (a) change a beneficiary designation made by the adult if the Court authorizes the change and specifies who is to be the new beneficiary; or
- (b) create a new beneficiary designation if
  - (i) the designation is made in an instrument that is renewing, replacing or converting a similar instrument made by the adult, while the adult had capacity to do so, and the newly designated beneficiary is the same beneficiary as was designated in the similar instrument, or
  - (ii) the designation is made in a new instrument that is not renewing, replacing or converting a similar instrument made by the adult, while the adult had capacity to do so, and the newly designated beneficiary is the adult's estate.

(3) Subject to this Act, the representation order and the approved representation plan, the representative for an adult may take any action, make any decision, give any consent, sign any document or do any other thing in respect of a matter within the representative's authority that the adult could do if the adult had capacity to do so.

(4) Any action taken, decision made, consent given, refused or withdrawn, document signed or other thing done by a representative for an adult in respect of a matter within the representative's authority has the same effect as if the adult had taken the action, made the decision, given, refused or withdrawn the consent, signed the document or done the other thing while having capacity. 2017, c. 4, s. 30.

**Disposal of real property**

**31 (1)** The representative for an adult may not dispose of any real property of the adult except in accordance with an order made under subsection (2).

**(2)** The Court may, upon application by the representative for an adult, make an order authorizing the disposition of the real property of the adult on such terms as the Court considers appropriate.

**(3)** Where real property is disposed of by the representative for an adult under a disposition order, the representative shall file with the Court a report on the disposition no more than 25 days after the day on which the disposition is completed.

**(4)** A report filed under subsection (3) must include

(a) proof of an increase in the representative's bond required under subsection 46(1) to account for the proceeds of the disposition; and

(b) any information prescribed by the regulations. 2017, c. 4, s. 31.

**Collection of information by representative**

**32 (1)** In this Section,

(a) "information" includes personal information as defined in the *Freedom of Information and Protection of Privacy Act*, personal health information as defined in the *Personal Health Information Act* and personal information as defined in the *Personal Information Protection and Electronic Documents Act* (Canada);

(b) "person" includes a partnership, an unincorporated association, a public body as defined in the *Freedom of Information and Protection of Privacy Act*, a custodian as defined in the *Personal Health Information Act* and an organization as defined in the *Personal Information Protection and Electronic Documents Act* (Canada).

**(2)** The representative for an adult may collect from a person any information in relation to the adult that is relevant to the exercise of the representative's authority or the carrying out of the representative's duties.

**(3)** A person shall, upon request of the representative for an adult, disclose the requested information in relation to the adult to the representative.

**(4)** Where the representative for an adult collects information in relation to the adult under this Section, the representative shall

(a) use and disclose the information only for the purpose for which it was collected; and

(b) take reasonable care to ensure the information is kept secure from unauthorized use or disclosure.



(5) The representative for an adult shall not attempt to collect any information in relation to the adult other than the information that the representative is entitled to collect under subsection (2). 2017, c. 4, s. 32.

#### **Application for order if decision not given effect**

33 (1) The representative for an adult may apply to the Court for an order under this Section if the representative has reason to believe that

(a) a decision the representative is authorized to make is not being given effect because

(i) the adult is failing or refusing to act in accordance with the decision, or

(ii) a person or other entity is obstructing the doing of anything necessary to give effect to the decision; and

(b) there would be a serious risk to the health or safety of the adult if the decision were not given effect.

(2) Where the Court is satisfied that the circumstances referred to in clauses (1)(a) and (b) exist, the Court may make any order the Court considers necessary and appropriate to give effect to the decision of the representative, including an order authorizing any person or entity to assist the representative or another person or entity in doing anything necessary to give effect to the decision. 2017, c. 4, s. 33.

#### **Limitations on authority**

34 (1) The representative for an adult may not

(a) represent the representative as being the adult in any communication with another person or entity or in any other respect;

(b) make or change, on behalf of the adult, a will; or

(c) make any decision prescribed by the regulations.

(2) The representative for an adult may not, on behalf of the adult,

(a) commence divorce proceedings;

(b) change or consent to a change in the arrangements respecting the custody, parenting arrangements, parenting time, contact time or interaction in relation to a child;

(c) consent to the adoption or guardianship of a child;

(d) consent to a treatment, procedure or therapy that involves using aversive stimulus; or

(e) consent to removal of tissue from the adult, while alive, for implantation in another living human body or for medical education or research,

except where the Court orders otherwise. 2017, c. 4, s. 34.

**Court approval required for gift**

**35 (1)** The representative for an adult may only make a gift out of the adult's property with the approval of the Court.

**(2)** The representative for an adult may apply to the Court for approval to make a gift out of the adult's property.

**(3)** The Court may approve the making of a gift if it is satisfied that

- (a)** the gift is not required to meet the needs of
  - (i)** the adult,
  - (ii)** the spouse of the adult, if any,
  - (iii)** any child of the adult who has not reached the age of majority, and
  - (iv)** any child of the adult who has reached the age of majority and is unable to earn a livelihood because of a physical or mental disability; and
- (b)** having regard to the past practices of the adult, there are reasonable grounds to believe that the adult would want to make the gift if the adult had the capacity to do so. 2017, c. 4, s. 35.

**Limitation on how representative may act**

**36** A representative shall act in accordance with this Act, the regulations, the representation order under which the representative was appointed and the approved representation plan. 2017, c. 4, s. 36.

**Amendment of representation plan**

**37 (1)** The representative for an adult may amend the approved representation plan for the adult by filing an amended representation plan with the Court.

**(2)** Subject to the regulations, a representative shall file an amended representation plan as required by the Court or upon any material change in the information contained in the most recently approved representation plan.

**(3)** Upon the filing with the Court of an amended representation plan, the Court may make an order continuing, varying or rescinding the representation order on any terms or conditions the Court considers appropriate.

**(4)** When continuing or varying a representation order under subsection (3), the Court shall

- (a)** approve the amended representation plan, subject to any variations the Court considers necessary; or

(b) require the representative to submit an amended representation plan for approval within the time specified in the order.

(5) A representation plan approved under subsection (4) supersedes the former approved representation plan. 2017, c. 4, s. 37.

#### **Actions, decisions and expenditures for adult and adult's family**

**38 (1)** Subject to subsection (2), a representative for an adult shall take such actions, make such decisions and, where the representative has authority respecting the adult's financial matters, make such expenditures out of the adult's property as are reasonably required for the support, care, benefit and education of

- (a) the adult;
- (b) the spouse of the adult, if any;
- (c) any child of the adult who has not reached the age of majority;
- (d) any child of the adult who has reached the age of majority and is unable to earn a livelihood because of a physical or mental disability; and
- (e) with the approval of the Court, any other individual.

(2) The representative for an adult shall not make any expenditures in respect of a person referred to in clause (1)(b), (c) or (d) if doing so would deplete the property of the adult to an extent that the representative could not make such expenditures as are reasonably required for the support, care, benefit and education of the adult. 2017, c. 4, s. 38.

#### **Representative to keep adult informed to extent possible**

**39 (1)** The representative for an adult shall act and make decisions

- (a) in the least restrictive and least intrusive manner that will protect and promote the adult's well-being and interests in financial matters; and
- (b) in a way that encourages the adult to become, to the extent possible, capable of caring for himself or herself and of making decisions in respect of matters under the representative's authority.

(2) Upon being appointed, the representative for an adult shall, within a reasonable time and in a manner that the adult is likely to best understand, inform the adult of the representative's appointment, the extent of the representative's authority and any conditions, limits or requirements to which the representative's authority is subject.

(3) The representative for an adult shall, within a reasonable time and in a manner that the adult is likely to best understand,

- (a) inform the adult of any significant decision that is to be made on the adult's behalf;
- (b) encourage and facilitate the adult's participation in decision-making;
- (c) advise the adult of the options that are reasonably and practically available; and
- (d) inform the adult of any significant decision the representative has made. 2017, c. 4, s. 39.

**Guidance in decision-making**

**40 (1)** The representative for an adult shall, when making a decision within the representative's authority,

- (a) follow any clear and relevant instructions given by the adult while the adult had capacity, including instructions contained in any personal directive or enduring power of attorney the effect of which has been suspended or that has been rescinded by the Court, unless
  - (i) the adult subsequently expressed a contrary wish while the adult still had capacity,
  - (ii) circumstances have changed such that the instruction is contrary to the intentions of the adult at the time the instruction was given, or
  - (iii) circumstances exist that would have caused the adult to set out different instructions had the circumstances been known, based on what the representative knows of the values and beliefs of the adult and from any other written or oral instructions of the adult;
- (b) in the absence of the instructions referred to in clause (a), act in accordance with the adult's current wishes if it is reasonable to do so;
- (c) in the absence of the instructions referred to in clause (a) or the wishes referred to in clause (b), act in accordance with what the representative reasonably believes the wishes of the adult would be based on what the representative knows of the values and beliefs of the adult; and
- (d) in the absence of the instructions referred to in clause (a) or the wishes referred to in clause (b) and, where the representative is not able to determine in accordance with clause (c) what the wishes of the adult would be, act in the manner that the representative reasonably believes would best promote and protect the adult's well-being and interests in financial matters.

(2) When the representative for an adult is attempting to ascertain the adult's instructions, wishes, values and beliefs in order to make a decision and to ascertain whether the instructions, wishes, values and beliefs are an informed and voluntary expression of the adult, the representative shall make reasonable efforts to consult with any persons who the representative has reason to believe may be familiar with the adult's instructions, wishes, values and beliefs. 2017, c. 4, s. 40.

#### **No decision if adult has capacity**

41 The representative for an adult may not make a decision for the adult if, in respect of the decision, the representative knows or has reasonable grounds to believe that the adult has capacity. 2017, c. 4, s. 41.

#### **Reassessment of capacity**

42 (1) Subject to an order of the Court and subsection (2), the representative for an adult shall, upon request by the adult, assist in arranging a reassessment of the adult's capacity.

(2) Subject to an order of the Court, the representative for an adult may not be required to assist in arranging a reassessment of the adult's capacity more often than once every six months except in extraordinary circumstances. 2017, c. 4, s. 42.

#### **Application of Trustee Act**

43 (1) Subject to subsection (2) and the representation order, Part I of the *Trustee Act* applies *mutatis mutandis* to the making of investments by the representative for an adult and, for greater certainty, a reference to the instrument creating the trust is to be read as a reference to the order and approved representation plan.

(2) Section 3C of the *Trustee Act* does not apply in the case of liability for loss arising from a decision or course of action by a representative that contravenes the express terms of the representation order or the approved representation plan. 2017, c. 4, s. 43.

#### **Will of adult**

44 (1) Where the representative for an adult has authority respecting financial matters, the representative shall make reasonable efforts to determine if the adult has a will and, where the adult has a will, the provisions of the will.

(2) A person who holds an original will made by an adult shall, upon request by the representative who has authority respecting financial matters, deliver a copy of the will to the representative, subject to any contrary instruction of the adult made at a time when the adult had capacity. 2017, c. 4, s. 44.

#### **Property dealt with in will or estate plan**

45 (1) The representative for an adult may not sell, mortgage, encumber, transfer or otherwise dispose of property, other than money, that the rep-

representative knows is the subject of a specific gift in the adult's will, or otherwise specifically dealt with by the adult's estate plan, unless it is necessary to comply with the representative's other obligations as representative.

(2) Where the representative for an adult disposes of any property which is the subject of a specific gift in the adult's will, or otherwise specifically dealt with by the adult's estate plan, the Court may, upon the application of any person affected by the disposition, make any order it considers necessary or advisable to best give effect to the adult's intentions having regard to the circumstances in which the property was disposed of.

(3) An application referred to in subsection (2) may be made before or after the death of the adult. 2017, c. 4, s. 45.

#### **Bonding requirement**

46 (1) Subject to subsection (4), a representative other than the Public Trustee or a trust company who is granted authority over any financial matter shall provide a bond in an amount equal to one and one quarter times the value of the personal property that is subject to the representative's authority.

(2) A bond provided by a representative may include

- (a) a personal bond with one or more sureties; or
- (b) a bond issued by a surety company licensed to carry on business in the Province.

(3) The amount of the bond provided by a representative must be adjusted from time to time so that it does not fall below one and one quarter times the value of the personal property that is subject to the representative's authority.

(4) Where the Court is satisfied that sufficient safeguards are or will be in place to protect and promote the adult's well-being and interests in financial matters, the Court may dispense with the requirement for a bond, or reduce the amount of the bond required, if

- (a) the representative is not granted authority over any of the adult's financial matters; or
- (b) the value of the adult's estate is less than \$3,000. 2017, c. 4, s. 46.

#### **Duty owed to adult**

47 Subject to what is expressly authorized by this Act, the regulations, the representation order and the approved representation plan, the representative for an adult owes to the adult the duty to

- (a) act in good faith;
- (b) not make secret profits;

- (c) not delegate the representative's authority to another person; and
- (d) not act for the representative's own benefit or the benefit of any person other than the adult. 20017, c. 4, s. 47.

**Exercise of care, skill and diligence**

**48** The representative for an adult shall, when exercising the representative's authority, exercise the care, skill and diligence that a reasonably prudent person would exercise in managing the person's own affairs. 2017, c. 4, s. 48.

**Keeping adult's property separate from representative's**

**49** Except where the Public Trustee acts as representative or as otherwise provided for by an enactment, the representation order or the approved representation plan, the representative for an adult shall

- (a) keep property subject to the representative's authority separate from the representative's own property; and
- (b) hold any money or financial assets that are subject to the representative's authority in a separate account that identifies the adult as the beneficial owner. 2017, c. 4, s. 49.

**REPORTING BY REPRESENTATIVE****Maintenance of accounts**

**50** Where the representative for an adult has authority respecting any of the adult's financial matters, the representative shall maintain accounts in accordance with the regulations. 2017, c. 4, s. 50.

**Court-ordered reporting**

**51** Subject to the regulations, on its own motion or on the application of the Public Trustee or any other interested person, the Court may, at any time, order the representative to submit to the Court, the Public Trustee or any other person

- (a) where the representative is responsible for any financial matters, accounts of any transactions and financial activities undertaken by the representative on behalf of the adult;
- (b) a report as to the representative's observations and opinion respecting the adult's capacity;
- (c) to the extent they are the subject of the representative's authority, a report as to the adult's personal care and health care since the later of the date of the representation order and the date on which the previous report was submitted; or
- (d) any information the Court considers appropriate. 2017, c. 4, s. 51.

**Submission of accounts upon death of adult**

**52** Where the appointment of the representative for an adult ends because of the death of the adult and any financial matters of the adult were the subject of the representative's authority, the representative shall, within two months of the death of the adult, submit accounts to the Court. 2017, c. 4, s. 52.

**Reporting upon end of appointment**

**53 (1)** Where the appointment of the representative for an adult ends for any reason other than the death of the adult, the representative shall, within three months of the end of the appointment, submit

- (a) to the extent they are the subject of the representative's authority, a report respecting the adult's personal care and health care;
- (b) where the representative was responsible for any financial matters, accounts;
- (c) a copy of any accounts, reports and information submitted under Section 51; and
- (d) any records relating to the adult's affairs or the representative's activities on behalf of the adult that are in the representative's possession or subject to the representative's control,

to the Court, the adult, any other person who has or will assume authority for the matters that had been subject to the representative's authority and, except where the representative is the Public Trustee, the Public Trustee.

**(2)** Where the appointment of the representative for an adult ends because of the death or incapacity of the representative, a personal representative, attorney or representative of the representative whose appointment has ended shall, upon request, provide any reports, accounts or records referred to in subsection (1) to

- (a) the alternative representative who commences acting as representative for the adult upon the death or incapacity of the representative whose appointment has ended;
- (b) a new representative appointed by the Court; or
- (c) where there is no alternative representative or new representative, the Public Trustee. 2017, c. 4, s. 53.

**Order if reporting unsatisfactory**

**54 (1)** Where a person who is required to submit a document under Section 51, 52 or 53 does not do so to the satisfaction of the person or entity to whom the documents are to be submitted, the person or entity to whom the documents are to be submitted may apply to Court and the Court may make such order as it considers necessary to ensure the submission of the documents to the person or entity.



(2) Where a person who is required to submit a document to the Court under Section 51, 52 or 53 does not do so to the satisfaction of the Court, the Court may, on its own motion, make such order as it considers necessary to ensure the submission of the documents to the Court. 2017, c. 4, s. 54.

#### REIMBURSEMENT AND COMPENSATION OF REPRESENTATIVE

##### Reimbursement for direct expenses

**55** The representative for an adult is entitled to be reimbursed out of the property of the adult for the direct expenses incurred and disbursements made in exercising the authority and carrying out the duties of a representative. 2017, c. 4, s. 55.

##### Request for compensation

**56 (1)** A representative may, in accordance with the regulations, request to be compensated in accordance with the fee schedule prescribed by the regulations.

(2) Where a representative has requested to be compensated in accordance with the fee schedule,

(a) the representative is not entitled to take the compensation under the fee schedule until authorized to do so by the Court; and

(b) the Court may reduce or eliminate the compensation to which the representative would otherwise be entitled under the fee schedule if the Court is satisfied the representative has not adequately discharged the representative's duties.

(3) Where a representative has not requested to be compensated in accordance with the fee schedule, the Court may determine the representative's compensation and, in doing so, shall consider the effort, care and responsibility undertaken by the representative and the time spent by the representative discharging the representative's duties.

(4) The Court may determine the compensation for the representative for an adult and authorize the representative to take the compensation out of the adult's property on an interim or final application for examination and approval of the representative's accounts or at such other time as the Court considers appropriate.

(5) Notwithstanding any authority to take compensation authorized by the Court, a representative may not take compensation from any funds derived from a government income maintenance or supplement program that is exempt from seizure, attachment or execution. 2017, c. 4, s. 56.

**Costs and fees of Public Trustee**

57 Notwithstanding Sections 55 and 56, the Public Trustee shall be paid the costs and fees for acting as representative to which the Public Trustee is entitled under the *Public Trustee Act*. 2017, c. 4, s. 57.

## PROCEEDINGS IN RELATION TO REPRESENTATION ORDER

**Review application**

58 (1) A representative for an adult shall apply for review of the representation order

- (a) as required by the order;
- (b) if there has been a significant change in the needs, circumstances or capacity of the adult that is relevant to the need for or terms of the order; or
- (c) if there has been a change in circumstances that affects the representative's
  - (i) ability to exercise the authority or carry out the duties of the representative, or
  - (ii) suitability to be a representative for the adult who is the subject of the order.

(2) An adult who is the subject of a representation order, the representative for the adult or any interested person may, in accordance with the regulations, apply to the Court for review of the order.

(3) Subsections 5(4) to (7) apply *mutatis mutandis* to an application for review made under this Section.

(4) Where an application for review of a representation order is made by the representative for an adult, the application under this Section must include, unless the Court orders otherwise,

- (a) where the representative is responsible for any financial matters, accounts of any transactions and financial activities undertaken by the representative on behalf of the adult since the later of the date of the order and the date of the most recent review of the order;
- (b) to the extent they are the subject of the representative's authority, a report as to the adult's personal care and health care since the later of the date of the order and the date of the most recent review of the order;
- (c) any accounts, reports and information submitted under Section 51 since the later of the date of the order and the date of the most recent review of the order;

- (d) where the application requests that the representation order be continued or varied, a representation plan;
- (e) a recent capacity assessment report respecting the adult if the capacity of the adult is at issue;
- (f) any other document or evidence required by the Court.

(5) Where an application for review of a representation order is made by a person other than the representative for the adult who is the subject of the order, the Court may require the representative to file with the Court any of the documents or evidence referred to in clauses (4)(a) to (f). 2017, c. 4, s. 58.

#### Authority of Court on review

59 (1) Subject to subsections (2) and (4), on an application for a review of a representation order, the Court may make an order continuing, varying or rescinding the order on any terms or conditions the Court considers appropriate.

(2) The Court shall rescind the representation order if the Court is satisfied that the adult who is the subject of the order is no longer in need of a representative.

(3) The Court may rescind the representation order, discharge the representative for the adult and appoint a new representative who meets the requirements of this Act or make any other order the Court considers appropriate if the Court is satisfied that the representative

- (a) is not acting or is unable or unwilling to continue to act as representative;
- (b) has refused or is refusing to act or to continue to act as representative;
- (c) has failed or is failing to act as representative or to act in accordance with this Act, the regulations, the order or the approved representation plan;
- (d) has acted in an improper manner or in a manner that has endangered or that might endanger the adult's well-being or interests in financial matters;
- (e) has committed a breach of trust; or
- (f) is no longer suitable to be the representative for the adult.

(4) Before rescinding a representation order, the Court shall satisfy itself that, where necessary,

- (a) suitable arrangements have been or will be made to protect and promote the well-being and interest in financial matters of the adult who is the subject of the order; or

(b) an application for another order has been or will be made.

(5) When continuing or varying a representation order, the Court shall specify a date by which the representative for the adult is to apply for the review of the continued or varied order if

(a) the capacity assessment report indicates that the adult's capacity is likely to improve; or

(b) in any case where the capacity assessment report does not indicate that the adult's capacity is likely to improve, the Court considers it appropriate to do so.

(6) Subsection 29(2) applies *mutatis mutandis* to the decision whether to specify under clause (5)(b), and the determination under clause (5)(a) or (b) of, the date referred to in subsection (5).

(7) When continuing or varying a representation order, the Court shall

(a) approve the representation plan included with the application for review of the representation order, subject to any variations the Court considers necessary; or

(b) require the representative to submit an amended representation plan for approval within the time specified in the order.

(8) A representation plan approved under subsection (7) supersedes the former approved representation plan.

(9) No decision or action taken by a representative under a representation order is invalid by reason only that the representative has not applied for the review of the order as required by subsection 58(1). 2017, c. 4, s. 59.

#### **Validity of prior actions when order rescinded or varied**

**60** (1) The rescission or variation of a representation order does not affect the validity of any action taken, decision made, consent given, refused or withdrawn or thing done by the representative for an adult on behalf of the adult before the rescission or variation.

(2) A contract entered into by the representative for an adult on behalf of the adult is binding on the adult after the representation order is rescinded or varied to the same extent as if the adult had entered into the contract while having capacity to do so. 2017, c. 4, s. 60.

#### **Application to Court for direction**

**61** (1) The representative for an adult may, in accordance with the regulations, if any, apply for the opinion, advice or direction of the Court on any

question respecting the adult or respecting the management or administration of the adult's well-being or financial matters.

(2) A representative acting on an opinion, advice or direction given by the Court is deemed, so far as the representative's duty is concerned, to have discharged the representative's duty as representative in respect of the subject-matter of the opinion, advice or direction.

(3) Subsection (2) does not operate to indemnify a representative in respect of any act done in accordance with an opinion, advice or direction if the representative is guilty of any fraud or wilful concealment or misrepresentation in obtaining the opinion, advice or direction. 2017, c. 4, s. 61.

#### **Authority of Court on applications generally**

62 (1) The Court may, upon application by an interested person or in the course of considering any other application made under this Act in respect of a representation order,

(a) inquire into a complaint or claim of misconduct, neglect or default on the part of the representative;

(b) make any order that the Court is authorized to make under Section 59 when reviewing a representation order; and

(c) order that the representative for the adult reimburse the adult to the extent of any loss suffered by the adult as a result of the misconduct, neglect or default of the representative.

(2) The Court may order the trial of an issue in respect of a complaint or claim under subsection (1)(a) and may make all necessary directions with respect to it.

(3) Section 59 applies *mutatis mutandis* to the making of an order referred to in clause (1)(b). 2017, c. 4, s. 62.

#### **Appeal of order**

63 (1) An appeal lies to the Nova Scotia Court of Appeal in respect of any order made under this Act.

(2) An interested person may appeal an order under subsection (1) on behalf of an adult who is the subject of the order. 2017, c. 4, s. 63.

#### **Authority re costs or expenses**

64 The Court or the Nova Scotia Court of Appeal may order that any costs or expenses incurred in a proceeding pursuant to this Act be paid

(a) by any party to the proceeding;

(b) out of the estate of the adult who is the subject of the proceeding,

or by any combination of the parties and the estate. 2017, c. 4, s. 64.

### Foreign order

**65 (1)** The Court may, upon application by a person who is granted authority in respect of an adult under a foreign order, make an order providing that the foreign order

(a) is of the same force and effect in the Province as if it were issued by the Court; and

(b) is subject to appeal and review in the same manner as a representation order,

and shall append a copy of the foreign order thereto.

**(2)** Where the foreign order includes authority respecting financial matters,

(a) the application must include an accurate inventory of the estate of the adult in the Province so far as this information has come to the knowledge of the applicant; and

(b) the applicant shall, upon discovering any additional property in the Province belonging to the estate of the adult, provide to the Court a revised inventory of the estate of the adult.

**(3)** Subsections 5(4) to (7) apply *mutatis mutandis* to an application made under subsection (1) and, upon the order being made, the order must be served upon or sent to the same persons as were served with or sent the notice application in the same manner as is prescribed under those subsections.

**(4)** On making an order under subsection (1), the Court may

(a) require the applicant to

(i) account or report, and

(ii) apply for a review of the order,

at such times and upon such conditions as the Court considers appropriate; and

(b) impose any terms, conditions or limits on the order as the Court considers appropriate.

**(5)** Sections 58 and 59 apply *mutatis mutandis* to the review of an order made under subsection (1).

**(6)** The Court may not make an order under subsection (1) until

(a) a certificate has been issued by the registrar, clerk or other officer of the court or body that issued the foreign order to the effect that the order is wholly unrevoked and of full effect; and

(b) subject to subsection (7), a bond or other security has been provided to the Court to cover the personal property in the Province of the adult in respect of whom the foreign order was made, unless the Court dispenses with security.

(7) A bond is not required under clause (6)(b) if the certificate of the registrar, clerk or other officer of the court or body that issued the foreign order states that security has been provided to that court or body in an amount sufficient to satisfy any requirement under the laws of the jurisdiction of that court or body. 2017, c. 4, s. 65.

#### **Proceedings under this Act**

**66 (1)** In any proceeding under this Act, the adult who is the subject of the proceeding

(a) has the right to retain and instruct counsel; and

(b) is entitled to be heard by the Court in the manner most appropriate to the adult's circumstances.

(2) Subject to subsection (1) and the regulations, the Court may consider and determine an application under this Act in the absence of the applicant and any other person.

(3) Subject to the *Nova Scotia Civil Procedure Rules*, the Court may refer any question arising in a proceeding under this Act to a person qualified to answer the question.

(4) At a hearing of an application under this Act, any person on whom the application is served or to whom the notice of application is sent and, with leave of the Court, any other interested person may appear and make representations.

(5) On an application under this Act, the Court may request submissions from any person on the circumstances of the adult who is the subject of the application and the potential for less restrictive alternatives, including whether there is support or assistance available to the adult that could affect the need for representation in making decisions respecting one or more matters. 2017, c. 4, s. 66.

#### **Relief from liability**

**67** Where in any proceeding it appears to the Court that

(a) a representative is or might be personally liable for a breach of any duty arising under this Act; and

(b) the representative has acted honestly, reasonably and in good faith, and ought fairly to be excused for the breach of duty and for omitting to obtain the direction of the Court in the matter in which the representative committed the breach,

the Court may relieve the representative either wholly or partly from personal liability for the breach. 2017, c. 4, s. 67.

#### GENERAL

##### **No action lies**

**68 (1)** No action lies against the Minister, an assessor or any person acting under the Minister or an assessor, who has acted honestly, reasonably and in good faith, for anything done or omitted to be done in exercising authority or carrying out duties or functions under this Act.

**(2)** Except where the Public Trustee is exercising authority or carrying out duties or functions as the representative for an adult, no action lies against the Public Trustee or a person acting under the Public Trustee, who has acted honestly, reasonably and in good faith, for anything done or omitted to be done in exercising authority or carrying out duties or functions under this Act. 2017, c. 4, s. 68.

##### **No liability for deposit account**

**69** Where the representative for an adult is authorized to permit the adult to open or maintain a deposit account and the representative does so in accordance with the representation order, the representative is not liable to account for or see to the application of any money paid into or out of the account. 2017, c. 4, s. 69.

##### **Offence and penalty**

**70** A representative for an adult who wilfully

- (a) causes mental or physical harm to the adult;
- (b) causes damage to or the loss of the property of the adult; or
- (c) contravenes subsection 32(4) or (5),

is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000. 2017, c. 4, s. 70.

##### **Review of Act**

**71** The Minister shall, within three years after this Act comes into force, undertake a review of the Act's effectiveness in meeting its purposes, and include consideration of supported decision-making, and, within one year after the review is undertaken, table a report on the review in the Assembly if the Assembly is then sitting or, where it is not then sitting, file it with the Clerk of the Assembly. 2017, c. 4, s. 71.

##### **Regulations**

**72 (1)** The Governor in Council may make regulations

- (a) prescribing matters as being financial matters;
- (b) respecting representation plans;



(c) respecting the validity of vulnerable sector checks for the purpose of being included with applications under this Act;

(d) prescribing documents or evidence that are to be included with an application for a representation order, including evidence to be included in a supporting affidavit;

(e) respecting the service of notices of application and the sending of copies of notices of application;

(f) respecting capacity assessments and assessors, including, without limiting the generality of the foregoing,

(i) respecting how capacity assessments are to be conducted,

(ii) respecting the content of capacity assessment reports,

(iii) prescribing health professions for the purpose of the definition of “assessor”, designating eligible persons as assessors and authorizing the Minister to designate eligible persons as assessors,

(iv) authorizing the Minister to establish mandatory and non-mandatory guidelines and standards for capacity assessments and requiring assessors to comply with mandatory guidelines and standards,

(v) requiring assessors to undergo such training and possess such qualifications as the Minister may prescribe,

(vi) authorizing the Minister to establish or approve training courses and continuing-competency programs for assessors,

(vii) respecting the circumstances under which a capacity assessment may be conducted in the absence of the adult who is to be assessed and the conduct of such a capacity assessment,

(viii) authorizing the Court to order an adult who is the subject of a representation order or an application under this Act to undergo a capacity assessment and prescribing the circumstances under which such an order may be made,

(ix) prescribing fees that may be charged for capacity assessments,

(x) prescribing the circumstances in which fees for capacity assessments are to be paid by the Crown, and

(xi) respecting the authority of an assessor to collect, use and disclose information, as defined in subsection 32(1), in relation to an adult who is the subject of a capacity assessment;

(g) prescribing matters that the Court must consider when determining whether a person is suitable to act as an adult's representative;

(h) respecting the provision of evidence to the Court by an alternative representative of a circumstance referred to in subclause 24(4)(a)(i), (ii) or (iii);

(i) respecting the requirement to file a report under subsection 31(3) and prescribing information that such a report is to include;

(j) respecting the making of an application under subsection 33(1);

(k) prescribing decisions that the representative for an adult is not permitted to make;

(l) respecting the making of gifts by the representative for an adult out of the adult's property;

(m) respecting the obligations of the representative for an adult to

(i) inform the adult of any significant decision to be made or made by the representative,

(ii) encourage and facilitate the adult's participation in decision-making, and

(iii) advise the adult of the options that are reasonably and practically available and consistent with the adult's wishes;

(n) respecting bonds and the requirement to provide a bond under this Act;

(o) respecting the maintenance of accounts;

(p) respecting the submission of accounts, records and information by a representative to the Court, the Public Trustee or any other person;

(q) respecting applications for the review of a representation order;

(r) respecting compensation of representatives, including

(i) prescribing a fee schedule for the compensation of representatives, and

(ii) respecting the request of a representative to be compensated in accordance with the fee schedule;

(s) respecting applications by the representative for an adult for the opinion, advice or direction of the Court on any question respecting the adult or respecting the management or administration of the adult's well-being or financial matters;

(t) respecting the determination of an application under this Act in the absence of the applicant and any other person, including respecting the filing of a notice of contest;

(u) respecting the procedures for applications under this Act;

*next clause is (w)*

(w) respecting matters subject to a representative's authority;

(x) respecting the exercise of a representative's authority, the limits on a representative's authority and the duties of a representative;

(y) respecting the powers and duties of the Public Trustee in relation to matters under this Act and prescribing additional powers and duties of the Public Trustee;

(z) authorizing a person or other entity to receive, investigate and take action in relation to reports of abuse or misuse of representation orders and respecting the making, receipt and investigation of, and the taking of action in relation to, reports, including, without limiting the generality of the foregoing,

(i) respecting the delegation of the authority of the person or other entity,

(ii) respecting the collection, use and disclosure of information as defined in subsection 32(1) for the purpose of investigating a report,

(iii) limiting the liability of the person or other entity conducting an investigation, and

(iv) authorizing justices to issue an order to enter and inspect any premises, including dwellings, named in the order for the purpose of an investigation;

(za) respecting the recognition of orders made under the former *Incompetent Persons Act* and the application of this Act to orders made under that Act;

(zb) requiring the use of forms prescribed by the Minister in proceedings under this Act and respecting the information that is to be provided by persons completing such forms;

(zc) defining any word or expression used but not defined in this Act;

(zd) further defining any word or expression defined in this Act;

(ze) respecting any matter or thing the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2017, c. 4, s. 72.

#### TRANSITION AND CONSEQUENTIAL AMENDMENTS

##### **Effect of reference to guardian**

73 Except where a contrary intention appears, a reference in any enactment to a guardian is to be read and construed as including a reference to a representative appointed under this Act. 2017, c. 4, s. 73.

##### **Guardianship orders under Incompetent Persons Act**

74 (1) Where, upon the coming into force of this Act, a guardianship order made under the former *Incompetent Persons Act* is in effect,

(a) the guardianship order continues in effect as if it were a representation order made under this Act;

(b) the person appointed as the guardian of an incompetent person is deemed to be the representative for the incompetent person and, subject to this Act, has the same authority in respect of the incompetent person's affairs as the guardian had under the guardianship order; and

(c) the guardian who is deemed to be the representative for the incompetent person shall apply to the Court for a review of the guardianship order continued in effect under this Section if the guardian knows or has reasonable grounds to believe that the incompetent person has the capacity to make decisions regarding any matters over which the guardian has decision-making authority under the guardianship order.

(2) For greater certainty, where, upon the coming into force of this Act, a guardianship order made under the former *Incompetent Persons Act* is in effect, the individual who is the subject of the guardianship order or any other interested person may apply to the Court for a review of the guardianship order. 2017, c. 4, s. 74.

##### **Change of Name Act amended**

75 *amendment*

##### **Companies Act amended**

76 and 77 *amendments*

##### **Condominium Act amended**

78 *amendment*

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**Credit Union Act amended**  
79      *amendment*

**Expropriation Act amended**  
80 to 82      *amendments*

**Human Organ and Tissue Donation Act amended**  
83      *amendment*

**Incompetent Persons Act repealed**  
84      Chapter 218 of the Revised Statutes, 1989, the *Incompetent Persons Act*, is repealed. 2017, c. 4, s. 84.

**Missing Persons Act amended**  
85      *amendment*

**Partnership Act amended**  
86      *amendment*

**Probate Act amended**  
87      *amendment*

**Protection for Persons in Care Act amended**  
88 and 89      *amendments*

**Public Trustee Act amended**  
90 to 96      *amendments*

**Rural Telephone Act amended**  
97      *amendment*

**Trustee Act amended**  
98 to 101      *amendments*

**Effective date**  
102      This Act has effect on and after December 28, 2017. 2017, c. 4, s. 102.

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