

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) day, the day
JUSTICE) of , 2012

BETWEEN:

[NAME(S)]

Applicant(s)

- and -

**[NAME OF INCAPABLE PERSON, NAME OF ATTORNEY FOR
PROPERTY AND/OR PERSONAL CARE, NAME OF TRUST COMPANY]
and THE PUBLIC GUARDIAN AND TRUSTEE**

Respondents

Application under s. 22 **[PROPERTY]** and 55 **[PERSONAL CARE]** of the
Substitute Decisions Act, 1992, S.O. 1992, c. 30.

J U D G M E N T

THIS APPLICATION was heard this day at **[Location of Court]**, in the presence of counsel for the applicant and **[the respondents (names)]**, **OR** **[no one appearing for the respondents (names)]**, although properly served, as appears from the affidavits of service filed], and the Public Guardian and Trustee **OR** **[no one appearing for the Public Guardian and Trustee, although properly served, as**

appears from the affidavits of service filed] **OR** [the Public Guardian and Trustee submitting its position in writing].

ON READING the notice of application and the evidence filed by the parties, and on hearing the submissions of counsel for the parties,

1. THIS COURT ORDERS that the power of attorney dated _____ that was granted to the respondent **[name of attorney]** by the respondent **[name of incapable person]** is terminated. **[OR]** THIS COURT ORDERS that the certificate of statutory guardianship dated _____ issued by the Public Guardian and Trustee with respect to the respondent **[name of incapable person]** is terminated.
2. THIS COURT DECLARES that **[name of incapable person]** is incapable of managing property and that, as a result, it is necessary for decisions to be made on **[his/her]** behalf by a person who is authorized to do so.
3. THIS COURT ORDERS that **[name(s) of proposed guardian(s)]** shall be appointed as the guardian[s] of property for **[name of incapable person]**.
4. THIS COURT ORDERS that the management plan of **[name(s) of proposed guardian(s)]** is approved and that the guardian[s] of property shall act in accordance with the management plan.
5. THIS COURT ORDERS that the guardian[s] of property shall commence an application to pass **[his/her/their]** accounts as the guardian[s] of property of **[name of incapable person]** for the period from today's date to _____, within six months after _____, **[and thereafter, pursuant to further court order]**.

Annotation:

The cost of a future application to pass accounts is an additional expense that should be considered at the time the guardianship application is brought. If the incapable person has a fixed income or otherwise limited resources, and expenses are roughly equal to income, consider asking the court to dispense with the requirement that the guardian of property return to pass accounts. In some circumstances, the court will dispense with this requirement.

6. THIS COURT ORDERS that [name of attorney for property or statutory guardian of property] shall forthwith deliver to [name of proposed guardian] all assets currently in [his/her] possession and control belonging to [name of incapable person]

7. An order that [name of proposed guardian] shall receive from [name of attorney for property or statutory guardian] is a list of assets of [name of incapable person] held by [him/her] and [name of proposed guardian] shall commence management of the property of [name of incapable person] on the basis of this list is a true and accurate listing of all of [name of incapable person]'s assets without in any way restricting [name of proposed guardian]'s ability to subsequently require [name of attorney for property or statutory guardian] to pass [his/her] accounts for the period during which [he/she] acted as [attorney/statutory guardian] of the property of [name of incapable person].

Annotation:

Ideally, a guardian of property who is taking over the management of an incapable person's property from an attorney or previous guardian will receive a full accounting so that the new guardian of property has a starting point. In reality, sometimes an accounting cannot be provided.

8. THIS COURT ORDERS that the proceeds [describe proceeds – i.e., the proceeds that were paid to the Accountant of the Ontario Superior Court of Justice to the credit of (incapable person) pursuant to the judgment of the Honourable (judge) dated (date of judgment)] shall be paid out to [name of payee] forthwith, that the period of appeal for the court’s order is abridged, and that the requirement in Rule 72.03 (2)(c)(ii) is dispensed with.

Annotation:

If assets are held by the Accountant to the credit of the incapable person pursuant to a judgment, they cannot be paid out to the guardian of property unless another court order is made. The most efficient way to address this is by including a provision in the guardianship judgment.

9. THIS COURT ORDERS the following with respect to the provision of security by the guardian of property:

[The posting of security is not required [OR]; the guardian of property shall post security in the form of a guardianship bond for the amount of [\$] to be filed with the court, and this judgment shall not issue until security as described above has been provided.]

10. THIS COURT DECLARES that [name of incapable person] is incapable of personal care, specifically in respect of [his/her] own health care, nutrition, shelter, clothing, hygiene and safety, and as a result, needs decisions to be made on [his/her] behalf by a person who is authorized to do so.

11. THIS COURT ORDERS that [name of proposed guardian] is appointed as full guardian of the person of [name of incapable person].

12. THIS COURT ORDERS that the guardianship plan of **[name of proposed guardian]** is approved and that the guardian of the person of **[name of incapable person]** shall act in accordance with the guardianship plan.

13. THIS COURT ORDERS that **[name of proposed guardian]**, as full guardian of the person of **[name of incapable person]**, may exercise custodial powers over **[name of incapable person]**, determine **[his/her]** living arrangements and provide for **[his/her]** shelter and safety.

14. THIS COURT ORDERS that **[name of proposed guardian]**, as full guardian of the person of **[name of incapable person]**, may act as **[his/her]** litigation guardian except for the purposes of litigation that relates to **[name of incapable person]**'s property or **[name of guardian]**'s status or powers as guardian[s] of **[name of incapable person]**'s person.

15. THIS COURT ORDERS that **[name of proposed guardian]**, as full guardian of the person of **[name of incapable person]**, may settle claims and proceedings on **[his/her]** behalf except for claims and proceedings that relates to **[name of incapable person]**'s property or **[name of guardian]**'s status or powers as guardian[s] of **[name of incapable person]**'s person.

Annotation:

Rule 7 of the Rules of Civil Procedure provides for the appointment of a litigation guardian for a party under disability. Subsection 59(2)(b)(c) carve out exceptions to Rule 7 when the litigation relates to issues other than the person's property or the guardian's status or powers. In contrast, the Property sections of the SDA do not address the authority of an attorney or guardian of property to act as litigation guardian as this is covered by Rule 7. Issues of representation of the incapable person may also arise in proceedings for various tribunals, and the guardian should review any such tribunal's rules of practice and consider the substance of the issues in order to determine what role the guardian should play.

16. THIS COURT ORDERS that **[name of proposed guardian]** shall have full access to personal information, including health information and records, to which **[name of incapable person]** could have access if capable, and that further **[name of proposed guardian]** may consent to the release of that information to another person, except for the purpose of litigation that relates to **[name of incapable person]**'s property or **[name of guardian]**'s status or powers as guardian[s] of **[name of incapable person]**'s person.

17. THIS COURT ORDERS that **[name of proposed guardian]**, as guardian of the person of **[name of incapable person]**, may make any decision on **[name of incapable person]**'s behalf to which the *Health Care Consent Act*, 1996 applies.

18. THIS COURT ORDERS that **[name of proposed guardian]**, as guardian of the person of **[name of incapable person]**, may make decisions about **[name of incapable person]**'s health care, nutrition, hygiene, employment, education, training, clothing, recreation, and about any social services provided to **[him/her]**.

19. THIS COURT ORDERS that the requirement of service of this application on the following individuals is dispensed with: **[names of family members who have consented or need not be served for any other reason]**.

20. THIS COURT ORDERS that a factum is not required in this application.

21. THIS COURT ORDERS that the applicant's costs with respect to this proceeding shall be paid from the property of the respondent **[name of incapable person]** on a full indemnity basis, fixed at [\$].

22. THIS COURT ORDERS that the Public Guardian and Trustee's fee for reviewing this application, as approved by the Attorney General, in the amount of

\$250.00 plus HST of \$32.50 shall be paid forthwith to the Public Guardian and Trustee from the property of [name of incapable person].

Annotation:

Section 8 of the Public Guardian and Trustee Act provides that the Public Guardian and Trustee may charge fees for anything done by the Public Guardian and Trustee under that Act or any other Act. As it is a statutory requirement that the Public Guardian and Trustee is served with all guardianship applications, the Public Guardian and Trustee is entitled to charge a fee for its review of the application. The above paragraph is usually requested by the Public Guardian and trustee, with the current fee being \$250 plus HST. The Public Guardian and Trustee always requests that the court order the payment of the fee from the incapable person's property, for clarity as to the obligation, quantum and source for payment of the fee.

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