

**Office of the Public Guardian and Trustee**

# **The Capacity Assessment Office**

**Questions and Answers**

# Table of Contents

- 1. What does the "Capacity Assessment Office" do? ..... 2
- 2. What is a 'capacity assessor'? ..... 2
- 3. Who is eligible to become a capacity assessor? ..... 2
- 4. What is the process for being designated a capacity assessor? ..... 3
- 5. In what circumstances would a capacity assessor's services be required? ... 3
- 6. In what circumstances would someone other than a capacity assessor be required to perform an assessment? ..... 4
- 7. How is mental incapacity defined? ..... 5
- 8. How is capacity assessed? ..... 5
- 9. Are capacity assessors employees of the government? ..... 6
- 10. Do capacity assessors have particular areas of expertise? ..... 6
- 11. What do capacity assessors charge? ..... 7
- 12. Who pays the assessor? ..... 7
- 13. Will the Capacity Assessment Office arrange assessments? ..... 8
- 14. What should I consider when selecting an assessor? ..... 8
- 15. Who oversees the conduct of assessors? ..... 9
- 16. Does a person have the right to refuse a capacity assessment? ..... 9
- 17. What happens if the person assessed disagrees with a finding of incapacity? ..... 9
- 18. How do I obtain the list of capacity assessors or more information? ..... 10

# THE CAPACITY ASSESSMENT OFFICE

## Questions and Answers

### 1. What does the “Capacity Assessment Office” do?

The Capacity Assessment Office trains eligible health professionals to be capacity assessors in accordance with the *Substitute Decisions Act* and is operated by the Ministry of the Attorney General. It also:

- maintains a current roster of qualified capacity assessors
- provides on-going education and consultation services to assessors
- operates a Financial Assistance Plan to assist individuals who wish to request an assessment but who cannot afford the costs
- answers inquiries about capacity assessment; and
- can assist in locating assessors with other language facility when needed

The Capacity Assessment Office is operated by the Ministry of Attorney General.

### 2. What is a ‘capacity assessor’?

A ‘capacity assessor’ is someone who is qualified and designated to determine whether an individual is mentally incapable of certain types of decision-making as described in the *Substitute Decisions Act*. In some circumstances, the *Substitute Decisions Act* gives capacity assessors the exclusive authority to make such determinations.

### 3. Who is eligible to become a capacity assessor?

The following health professionals are eligible to become capacity assessors:

- doctors
- Registered Nurse or Registered Nurse (Extended Class)

- psychologists
- registered social workers
- occupational therapists

#### **4. What is the process for being designated a capacity assessor?**

Applicants must successfully complete a training program provided by the Ministry of the Attorney General, maintain a minimum of \$1,000,000 of professional liability insurance, and be a member in good standing with their professional college. To maintain designation, a capacity assessor must complete a minimum of 5 assessments in 2 years and successfully complete and participate in continuing education activities.

#### **5. In what circumstances would a capacity assessor's services be required?**

If a person does not have a power of attorney and becomes incapable of making personal or financial decisions, another person may have to be given special legal authority to make decisions on the person's behalf. This authority is called *guardianship*.

Before such authority may be assigned, it must be determined whether the person is, in fact, mentally incapable. In certain circumstances spelled out in the *Substitute Decisions Act*, a designated capacity assessor is the only professional who is authorized by law to make this determination.

For example, a guardian of property may only be appointed to manage an incapable person's finances and their property without a court hearing if a capacity assessor has assessed the person and found them to be incapable.<sup>1</sup>

---

<sup>1</sup> One exception relates to in-patients of psychiatric facilities who must, according to the *Mental Health Act*, be examined regarding their capacity to manage finances by their attending physicians. In this circumstance the attending physician does not have to be a designated capacity assessor.

A capacity assessor's opinion may also be required if a person has made a power of attorney and specified in the document that their incapacity must be proven before the power of attorney can be used. If the individual doesn't say how incapacity is to be proven, a capacity assessor's opinion is required.

An assessment of mental capacity for any purpose other than those specified in the *Substitute Decisions Act* need not be performed by a designated capacity assessor. In situations not covered by the *Act*, another professional may be able to provide an opinion about capacity for that particular purpose. This may be a less intrusive or less costly option. For example, many health care decisions fall under the *Health Care Consent Act* and can be made by a spouse, relative or other appointed person, if an individual is incapable of making health care decisions. Before pursuing an application for guardianship for personal care, it is advisable to seek legal advice to determine if a court appointed guardian is necessary for the protection of the person or whether the decisions required to be made are covered under the *Health Care Consent Act*.

## **6. In what circumstances would someone other than a capacity assessor be required to perform an assessment?**

There are certain types of assessments that capacity assessors do not do because the law provides a different way for them to be done. For example, the *Health Care Consent Act* states that if medical treatment is proposed for a person, it is up to the health professional who is proposing the treatment to decide if the person is capable of giving or refusing consent to the treatment. The same law requires that a determination of a person's capacity to make a decision about admission to a long-term care facility may only be made by specific types of health professionals – called *evaluators*. Evaluators are usually available through the Local Health Integration Network (LHIN). Designated capacity assessors are not involved in these decisions.

Before requesting any assessment - whether from a capacity assessor or other professional – it is important to be clear about the purpose of the capacity

assessment, and certain that an assessment is actually necessary in the circumstances. Check whether the particular type of assessment proposed may only be done by a designated capacity assessor or if there are alternatives. If you are uncertain on this point, the Capacity Assessment Office may be able to assist you.

## **7. How is mental incapacity defined?**

In Ontario, a finding of incapacity relates to certain types of decisions. For example, a person who is found mentally incapable of managing their property or finances is not necessarily incapable of making decisions regarding their personal care.

A person is incapable of managing property if they are not able to understand information that is relevant to making a decision in the management of their property or is not able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.

A person is incapable of personal care if they are not able to understand information that is relevant to making a decision concerning their own health care, nutrition, shelter, clothing, hygiene or safety, or is not able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.

## **8. How is capacity assessed?**

Although it depends on the category of decision-making (e.g. finances, health care, shelter, etc.) that is being assessed and the level of cognitive functioning of the person being assessed, there are some general protocols that are followed in every assessment.

The assessor will try to determine whether the person's understanding of the issues is factually accurate. For example, if the assessment is about capacity to manage finances, the assessor will determine whether the person can accurately

identify their income, assets, debts and other financial involvements. The assessor will also assist the person by providing relevant information and testing the extent to which the person can retain, interpret and manipulate that information. The person's responses are evaluated in order to determine whether they demonstrate an understanding of the information being discussed.

The choices the person is making (or neglecting to make) are also discussed in order to assess whether the person realizes the consequences of these choices and can explain the basis for them. Assessors do not infer incapacity simply because the person's choices are extremely unusual or appear to be against their own interests or welfare. Similarly, the person's capacity to appreciate the consequences of choices is evaluated in the context of the person's particular lifestyle, values and beliefs. The only relevant issue is the person's level of cognitive functioning and ability to reason and process information, not the merits of the choices the person makes. In other words, a capable person is entitled to make choices that may be "bad".

### **9. Are capacity assessors' employees of the government?**

No. Capacity assessors are independent and are not employed by the government. Most capacity assessors have a private professional practice or are employed by a health care service.

### **10. Do capacity assessors have particular areas of expertise?**

Yes, some capacity assessors do have particular areas of expertise. Although all capacity assessors have training and expertise in conducting assessments, some have specific skills and experience working with people who have certain types of disabilities, such as dementia, mental illness or brain injury.

## 11. What do capacity assessors charge?

Capacity Assessors set their own hourly rates. The rates tend to vary according to the occupational group to which the assessor belongs. Rates range between \$90 and \$180 per hour, although some assessors do charge higher fees because of their expertise in a specialized field.

The total cost of the assessment will depend on a number of additional factors including the:

- nature and complexity of the person's condition;
- assessor's experience in conducting assessments;
- time required to complete the assessment and the related forms; and
- expenses, including travel, that may be required.

## 12. Who pays the assessor?

In most cases, the person requesting the assessment is responsible for paying the assessor. For example, if a family member, a friend, or a caregiver requests the assessment, they would pay the assessor directly. If a guardian of property is then appointed for the person, the guardian can provide reimbursement for the costs of the assessment from the incapable person's funds if there is sufficient money to do so.

There is a Financial Assistance Program available to cover the cost of an assessment in situations where an individual (not an institution or agency) is requesting it and cannot afford the fees. Applications for financial assistance can be obtained by contacting the Capacity Assessment Office.

This assistance is available if:

- the particular assessment required cannot, by law, be completed by anyone other than a designated capacity assessor;



- the Capacity Assessment Office agrees that a capacity assessment is appropriate in the circumstances;
- the person is able to self-request or family member requests, and person will not refuse the assessment, and
- the individual completing the application for the assessment must meet the financial criteria to be eligible for financial assistance. To determine this, the applicant will need to provide financial information about their own finances and submit a completed financial assistance application.

The Capacity Assessment Office will notify the applicant when assistance has been approved or denied.

### **13. Will the Capacity Assessment Office arrange assessments?**

No, it is important that you select the capacity assessor that you feel is best suited to address your request and that you have the opportunity to discuss the details with the assessor directly. The Capacity Assessment Office will provide you with a list of assessors which identifies the geographic area in which they work and their areas of expertise. If financial assistance has been approved, the assessor must submit an estimate of costs for approval before doing the assessment.

### **14. What should I consider when selecting an assessor?**

It is important to determine whether an assessment by a capacity assessor is required to resolve the situation. Other factors to consider include:

- the geographic area in which the assessor works;
- the assessor's availability;
- the assessor's particular area of expertise;
- the fees proposed by the assessor; and
- the language(s) spoken by the assessor if the person for whom the assessment is proposed does not speak fluent English.

Francophone individuals have a right to be assessed in French. Languages spoken by an assessor are listed on the assessor roster. Translation or interpretation costs may also be covered in certain circumstances by the Financial Assistance Program.

A partial subsidy may also be available in cases where it is necessary for an assessor to travel more than two hours if they meet specific clinical/language needs.

### **15. Who oversees the conduct of assessors?**

All assessors are members of professional groups and are licensed by their regulatory Colleges. The Colleges set standards of professional conduct and competency. They have the authority to handle complaints concerning an assessor's conduct or quality of work and may take disciplinary measures if warranted.

The Capacity Assessment Office is responsible for providing training, continuing education and guidance to assessors. It maintains the roster of designated capacity assessors and responds to inquiries from the public. Assessors can also access assistance and expert clinical advice through the Capacity Assessment Office when dealing with difficult cases.

### **16. Does a person have the right to refuse a capacity assessment?**

Yes. An assessment cannot be done if the person for whom it is proposed refuses, unless a court order has been obtained. A court order would be necessary to override the person's refusal.

### **17. What happens if the person assessed disagrees with a finding of incapacity?**

If the capacity assessment resulted in the appointment of a guardian of property but no order has been made by a court, the person assessed may ask the Consent and Capacity Board to review the finding. Information about the review process can be obtained from the Consent and Capacity Board at 1-866-777-7391 or by accessing the board's website at: [www.ccboard.on.ca](http://www.ccboard.on.ca).

If the assessment is being used in a court proceeding, the person may make their objections known during the court proceeding. Legal advice should be obtained regarding an appeal of a court order.

### 18. How do I obtain the list of capacity assessors or more information?

You can call, fax or write The Capacity Assessment Office:

<p>The Capacity Assessment Office 595 Bay Street, Suite 800 Toronto, ON M5G 2M6 <a href="mailto:CAO@ontario.ca">CAO@ontario.ca</a></p>	<p>TTY: 416-314-2687 Toll-free: 1-866-521-1033 Fax: 416-327-6724</p>
--	--

The following brochures or links on the Public Guardian and Trustee website will help you understand the legislation and the options provided by the legislation to protect vulnerable adults:

- Guide to the *Substitute Decisions Act*
- Powers of Attorney – Questions and Answers
- Power of Attorney Kit
- Becoming a Guardian of Property
- Duties and Powers of a Guardian of Property
- Register of Guardians
- Role of the OPGT in Making Substitute Health Care Decisions

[http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/brochures\\_and\\_forms.php](http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/brochures_and_forms.php)

Guidelines for conducting capacity assessments are posted at:

<https://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/capacity/2005-06/guide-0505.pdf>. Alternate formats of this brochure are available upon request. Please contact 416-314-2803 or toll free 1-800-366-0335.

<p>Ministry of the Attorney General The Office of the Public Guardian and Trustee The Capacity Assessment Office ISBN 978-1-4249-4026-4</p>	<p>© Queen's Printer for Ontario, 2007 Reprinted in 2020 Disponible en français</p>
---	---