

August 12, 2024

CONSULTATION DRAFT
ADULT GUARDIANSHIP AND TRUSTEESHIP ACT
CAPACITY ASSESSMENT REGULATIONS

Pursuant to 68 of the *Adult Guardianship and Trusteeship Act* R.S.P.E.I. 1988, Cap. A-4.2, Council made the following regulations:

1. Definitions

In these regulations,

- (a) “**Act**” means the *Adult Guardianship and Trusteeship Act* R.S.P.E.I. 1988, Cap. A-4.2;
- (b) “**regulatory body**” means, with respect to medical practitioners, the College of Physicians and Surgeons of Prince Edward Island.

2. Prescribed form

The prescribed form of the capacity assessment report is that set out in the Schedule to these regulations.

3. Applicable rules

(1) The following rules apply to capacity assessments:

- (a) a capacity assessment may be conducted only if the need for a capacity assessment has been established by the person requesting it;
- (b) a person has the right to refuse to undergo or continue with a capacity assessment;
- (c) subject to subsection (3), a person has the right to have another person present for the purposes of assisting the person in feeling comfortable and relaxed when undergoing a capacity assessment;
- (d) a person has the right to have the assistance of an interpreter or the use of a device to assist the person to communicate in order for the person to be able to fully demonstrate the person’s capacity;
- (e) a person shall be given the opportunity to undergo a capacity assessment at a time when and under circumstances in which the person will be likely to be able to demonstrate the person’s full capacity;
- (f) a qualified practitioner shall make reasonable efforts to obtain any information that is relevant to the assessment of a person’s capacity.

Guidelines

(2) The Minister may establish guidelines for the conduct of capacity assessment in consultation with the regulatory body whose members may be designated as qualified practitioners under section 6 of the Act.

Rules applicable to person assisting

- (3) A person who is present at a capacity assessment for the purposes of assisting another person to communicate or feel relaxed
 - (a) shall comply with any directions of the qualified practitioner; and
 - (b) may be asked to leave by the qualified practitioner if the person does not comply with a direction under clause (a).

4. Conduct of capacity assessment

- (1) A capacity assessment relating to guardianship or trusteeship shall be conducted in accordance with this section, section 3 and any guidelines established by the Minister.

Preliminary duties of requesting person

- (2) When a capacity assessment is requested for a person, the person requesting it shall
 - (a) advise the qualified practitioner of the reasons why the capacity assessment has been requested and provide the practitioner with a description of any event that gave rise to the request for the capacity assessment; and
 - (b) ensure that a medical evaluation of the person is conducted within the three-month period preceding the capacity assessment and confirm to the qualified practitioner that the results of the evaluation did not indicate that the person was suffering from a reversible temporary medical condition that appeared likely to have a significant impact on the person's capacity to make a decision about personal matters or financial matters.

Preliminary duties of qualified practitioner

- (3) Before conducting a capacity assessment for a person, a qualified practitioner shall make reasonable efforts to
 - (a) meet with the person; and
 - (b) unless the level of consciousness of the person is non-responsive, explain to the person
 - (i) the purpose and nature of the capacity assessment,
 - (ii) that the person has the right to refuse to undergo the capacity assessment or refuse to continue with the capacity assessment at any point during the capacity assessment,
 - (iii) that the person has the right to have another person present for the purposes of assisting the person to feel comfortable and relaxed when undergoing the capacity assessment,
 - (iv) that the person has the right to have the assistance of an interpreter or a device to assist the person to communicate in order to be able to fully demonstrate the person's capacity during the capacity assessment, and
 - (v) the significance and effect of a finding that the person does not have the capacity to make a decision respecting personal matters or financial matters.

Duties when assessing capacity

- (4) In conducting a capacity assessment for a person, a qualified practitioner shall
 - (a) unless the level of consciousness of the person is non-responsive, ask the person if there have been any significant changes recently in the person's beliefs and values related to making decisions about the matters being assessed, and

- (b) if the person requests, or it appears to the qualified practitioner that the person needs, the assistance of a person or the use of any device to undergo the capacity assessment, including, without limitation,
 - (i) the assistance of an interpreter or device to communicate, or
 - (ii) the assistance of another person to be comfortable and relaxed,ensure that the assisting person is present and able to assist or that the interpreter or device is provided.

Applicable conditions for conduct of capacity assessment

- (5) A qualified practitioner may conduct a capacity assessment for a person only if the person has not refused to undergo or continue with the capacity assessment and,
 - (a) in the opinion of the qualified practitioner, the person
 - (i) understands the purpose of the capacity assessment and that the person has the right to refuse to undergo or continue with the capacity assessment,
 - (ii) appears to be capable of consenting to the capacity assessment, and
 - (iii) has consented to the capacity assessment; or
 - (b) in the opinion of the qualified practitioner,
 - (i) the person appears not to be capable of consenting to the capacity assessment, and
 - (ii) it is in the best interests of the person to conduct the capacity assessment.

Effect of refusal

- (6) Where a person refuses to undergo a capacity assessment or refuses to continue with a capacity assessment at any point during the capacity assessment, the qualified practitioner
 - (a) shall not take any further steps with respect to the capacity assessment other than to note on the capacity assessment report that the person has refused to undergo or continue with the capacity assessment;
 - (b) shall immediately leave the person's residence, if the qualified practitioner has attended at the person's residence to conduct the capacity assessment; and
 - (c) shall notify the person who has requested the capacity assessment that the person refused to undergo or continue with the capacity assessment.

Criteria to be applied

- (7) When conducting an assessment of a person's capacity to make decisions about personal matters or financial matters, the qualified practitioner shall
 - (a) consider the person's ability to
 - (i) understand the information that is relevant to a decision, and
 - (ii) appreciate the reasonably foreseeable consequences of a decision and a failure to make a decision; and
 - (b) form an opinion about whether the person has the capacity to make decisions about personal matters or financial matters.

Factors to be considered

- (8) In forming an opinion under subsection (7), the qualified practitioner shall take into account
 - (a) whether the person has the ability to retain information that is relevant to making decisions; and
 - (b) any other factors the qualified practitioner considers relevant.

Effect of service of application on person

- (9) Where a qualified practitioner conducts a capacity assessment in respect of an application for a guardianship order or a trusteeship order, the qualified practitioner shall also form an opinion as to whether serving the person with an application for the guardianship order or trusteeship order is likely to cause harm to the person.

Further considerations

- (10) Where the qualified practitioner is of the opinion that the person does not have the ability to do the things referred to in subsection (7), the qualified practitioner shall
 - (a) consider whether the person is likely to regain some or all of the person's capacity to make decisions about personal or financial matters and, if so, the time at which the adult is likely to regain capacity; and
 - (b) if the qualified practitioner believes that the person is likely to regain some or all of the person's capacity to make decisions about personal or financial matters, include in the capacity assessment report a recommendation that a further capacity assessment of the person be conducted, including the period within which it should be conducted.

Temporary protection order

- (11) Subsections (1) to (8) and (10) apply, with any necessary modifications, to a capacity assessment that is conducted for the purposes of an application for a temporary protection order under section 64 of the Act.

5. Capacity assessment report

A capacity assessment report shall contain the information required in the form set out in the Schedule to these regulations.

6. Commencement

These regulations come into force on

SCHEDULE

CAPACITY ASSESSMENT REPORT

Complete this form to report on the assessment of a person's capacity under the *Adult Guardianship and Trusteeship Act* if you are a qualified practitioner under the Act and regulations.

QUALIFIED PRACTITIONER

I,..... (name of qualified practitioner), am a medical practitioner.

PERSON BEING ASSESSED

The person being assessed is (Person's name, hereinafter the "Person")

The Person's current address

.....

The Person's date of birth:

The Person's Personal Health Number (PHN):

PERSON'S CIRCUMSTANCES

Birthplace:

Education:

Occupation:

Languages:

Living situation (e.g. at home, group home, community care, etc.):

Living conditions (e.g. describe Person's living conditions, and any concerns for safety and well-being in current living conditions):

.....

Caregiver information (if applicable):

COMMUNITY AND SOCIAL SERVICE RESOURCES

Health/social service professional involved with Person:

Name: Profession/title: Phone number:

Name: Profession/title: Phone number:

Name: Profession/title: Phone number:

Name: Profession/title: Phone number:

Community and family supports:

Name: Relationship: Phone number:

Support offered to individual:

.....

Name: Relationship: Phone number:

Support offered to individual:

.....

Name: Relationship: Phone number:

Support offered to individual:

.....

Name: Relationship: Phone number:
Support offered to individual:
.....

PURPOSE

The reason(s) or circumstances related to this assessment are:

.....
.....
.....

The person who requested this assessment (if not the Person, provide name and relationship to the Person):

..... (name); and
..... (relationship to the Person, if applicable).

Has this assessment been ordered by the court? Yes: No:

Date of Capacity Assessment:

At the time of the Capacity Assessment, the Person was (check one):

- Alert
 - Fluctuating; or
 - Non-responsive
- Provide comments:

.....
.....

PRE-ASSESSMENT NOTIFICATIONS

Prior to conducting this capacity assessment (please initial):

- I met with the Person; or
- I could not meet with the Person, but I made reasonable efforts to meet with the Person.

Reasonable efforts made:

.....
.....

Unless the level of consciousness was non-responsive, I explained to the Person

- The purpose and nature of the capacity assessment;
- That the Person has the right to refuse to undergo the capacity assessment or refuse to continue with the capacity assessment at any point during the capacity assessment;
- That the Person has the right to have another person present for the purposes of assisting the person to feel comfortable and relaxed when undergoing the capacity assessment;
- That the Person has the right to have the assistance of an interpreter or a device to assist the person to communicate in order to be able to fully demonstrate the Person’s capacity during the capacity assessment; and
- The significance and effect of a finding that the Person does not have the capacity to make a decision respecting personal matters or financial matters.

Unless the level of consciousness was non-responsive, I determined whether it was necessary for the Person to have, or whether the Person is requesting, the assistance of a person or the use of any device to undergo the capacity assessment, including, without limitation,

- the assistance of an interpreter or device to communicate, or

- the assistance of another person to be comfortable and relaxed.

Unless the level of consciousness was non-responsive, I asked the Person if there have been any significant changes recently to the Person's beliefs and values related to making decisions about the matters being assessed.

ASSISTANCE INFORMATION

Language used to complete capacity assessment:

If applicable, provide details on the assistance of an interpreter or device to help the Person communicate:

.....
.....

If applicable, provide details on the assistance of another person to help the Person to be comfortable and relaxed, including the name of the person providing assistance and the relationship to the Person:

.....
.....

MEDICAL INFORMATION

Current medical or psychiatric diagnoses if available (mental health, medical, surgical):

.....
.....

Prognoses (mental health, medical, surgical):

.....
.....

ASSESSMENT INSTRUMENTS (if known)

Example: Mini Mental State Examination (MMSE), Montreal Cognitive Assessment (MOCA), Geriatric Depression Scale (GDS), InterRAI Assessment Instrument

Instrument used:

Date instrument used:

Instrument conducted by:

Results/comments:

.....
.....

Instrument used:

Date instrument used:

Instrument conducted by:

Results/comments:

.....
.....

Instrument used:

Date instrument used:

Instrument conducted by:

Results/comments:

.....
.....

FUNCTIONING ASSESSMENT

A description of the Person’s functional ability is as follows:

Mobility:

.....
.....

Activity of Daily Living:

.....
.....

Instrumental Activities of Daily Living:

.....
.....

ADDITIONAL INFORMATION

Name/Source:

Profession:

Relationship:

Name/Source:

Profession:

Relationship:

Name/Source:

Profession:

Relationship:

Additional information obtained from above sources:

.....
.....
.....

ASSESSMENT OF CAPACITY ABOUT PERSONAL MATTERS – GUARDIANSHIP

The *Adult Guardianship and Trusteeship Act* defines capacity to mean, in respect of the making of a decision about a matter, the ability of the Person, independently or with assistance, to understand the information that is relevant to the decision and to appreciate the reasonably foreseeable consequences of a decision and the failure to make a decision.

I understand that in assessing the capacity of the Person to make decisions about personal matters, “personal matters” means any matter, except a financial matter, relating to the Person, including the personal matters listed below.

I have assessed the capacity of the Person to make decisions about the following personal matters, and my opinion respecting the Person’s capacity to make decisions about the following personal matters is indicated below:

Capacity Y/N	Personal matter assessed	Reason for opinion on capacity about specific personal matter (optional)
	Health care	
	Basic needs, including nutrition, clothing and personal care	
	Where, with whom and under what conditions the Person is to live, either permanently or temporarily	
	With whom the Person may associate	
	The Person’s participation in social activities	
	The Person’s participation in any educational, vocational or other training	
	The Person’s employment	
	Commencing, continuing or defending a legal proceeding	

General reasons for opinion on capacity (mandatory)

The reason(s) for my opinion on capacity about personal matters:

.....

Where I have indicated above that, in my opinion, the Person does not have capacity to make decisions about one or more personal matters, I have considered whether the Person is likely to regain some or all of the capacity to make decisions about the matter(s) and I believe the Person

..... will likely regain capacity, in full or in part, to make decisions about the personal matter(s).
 will likely not regain capacity, in full or in part, to make decisions about the personal matter(s).

IF THE PERSON WILL LIKELY REGAIN CAPACITY, IN FULL OR IN PART, PLEASE COMPLETE:

The Person will likely gain capacity, in full or in part, to make decisions about the personal matter(s)
 Within an estimated time period:

On the happening of an event:

Other comments (if any):

ASSESSMENT OF CAPACITY ABOUT FINANCIAL MATTERS - TRUSTEESHIP

The *Adult Guardianship and Trusteeship Act* defines capacity to mean, in respect of the making of a decision about a matter, the ability of the Person, independently or with assistance, to understand the information that is relevant to the decision and to appreciate the reasonably foreseeable consequences of a decision and the failure to make a decision.

I understand that in assessing the capacity of the Person to make decisions about financial matters, “financial matters” means any matter related to the acquisition, disposition, management and protection of the Person’s property.

Specifically, I have assessed the capacity of the Person to make decisions about the following financial matters, and my opinion respecting the Person’s capacity to make decisions about the following financial matters is indicated below:

Capacity Y/N	Financial matter assessed	Reason for opinion on capacity about specific personal matter (optional)
	The Person’s personal property (e.g. vehicle, cell phone, etc.)	
	The Person’s real property (e.g. house or land)	
	The Person’s trade or business	
	Transfer of the Person’s property to another person	
	Performance of a contract	
	Commencing, continuing or defending a legal proceeding	

General reasons for opinion on capacity (mandatory)

The reason(s) for opinion on capacity about financial matters:

.....
.....
.....

Where I have indicated above that, in my opinion, the Person does not have capacity to make decisions about financial matters, I have considered whether the Person is likely to regain some or all of the capacity to make decisions about financial matters and I believe the Person:

..... will likely regain capacity, in full or in part, to make decisions about the financial matter(s).
..... will likely not regain capacity, in full or in part, to make decisions about the financial matter(s).

IF THE PERSON WILL LIKELY REGAIN CAPACITY, IN FULL OR IN PART, PLEASE COMPLETE:

The Person will likely gain capacity, in full or in part, to make decisions about the financial matters(s)

Within an estimated time period:

On the happening of an event:

Other comments, if any:

.....
.....

In my opinion, if the Person is notified of the application for Guardianship or Trusteeship

..... there is risk of harm to the Person.
..... there is no risk of harm to the Person.

Reasons:

.....
.....

The Person has expressed a preference for a specific individual for guardianship or trusteeship:

..... Yes
..... No

If Yes, details are:

.....
.....

Comments and Additional Notes (optional):

.....
.....
.....

.....

.....

Signature of Qualified Practitioner

Date