

KEY MESSAGES

Capacity Assessment Section 3(1-4)

- 1) A capacity assessment may be conducted only if there is a need for the capacity assessment.
- 2) An adult has the right to refuse to undergo or to continue with a capacity assessment at any time.
- 3) An adult has the right to have a person present to assist them in feeling comfortable and relaxed when undergoing a capacity assessment. A person who is present at a capacity assessment for the purpose of assisting the adult to communicate or to feel comfortable and relaxed
 - (a) should comply with any directions of the capacity assessor, and
 - (b) may be asked to leave by the capacity assessor if the person does not comply with the directions of the capacity assessor.
- 4) An adult has the right to have the assistance of an interpreter or the use of a device to assist them to communicate in order for them to be able to fully demonstrate their capacity during the capacity assessment.
- 5) An adult shall be given the opportunity to undergo a capacity assessment at a time when they would most likely be able to demonstrate their full capacity.
- 6) A capacity assessor will make reasonable efforts to obtain any information that is relevant to the assessment of the adult's capacity.
- 7) The Minister may establish guidelines for the conduct of capacity assessments and also will enter into legal agreements with the Colleges that will have designated capacity assessors (Nurses, Social workers, Occupational therapists, etc)

Conducting of a Capacity Assessment Sections 4 (1-10):

Any Capacity Assessments must follow the above and;

- 1) Before any Capacity assessment can occur, the capacity assessor must be advised as to the reason for the assessment and any events that may have led up to the request of the capacity assessment. Also, a medical evaluation of the adult was conducted within the 3 month period before the capacity assessment to rule out any reversible temporary medical condition.
- 2) To meet with the adult in person and explain to them the purpose and nature of the capacity assessment and that the adult has the right to refuse to undergo or to continue with a capacity assessment at any time.
- 3) The significance and ramifications of a finding that the adult does not have the capacity to make a decision respecting to their personal and/or financial matters.
- 4) Ask the adult if there have been any significant changes recently in their beliefs and values related to making decisions about the matters being assessed.
- 5) In the opinion of the capacity assessor, the adult must understand the purpose of the capacity assessment. The adult must appear capable of consenting to the capacity assessment and has consented to the capacity assessment.

OR

- 6) In the opinion of the capacity assessor, the adult appears not capable of consenting to the capacity assessment and it's in their best interests to conduct the capacity assessment.
- 7) If an adult refuses to undergo a capacity assessment or refuses to continue with a capacity assessment at any point during a capacity assessment.
 - a) The capacity assessor will leave the adult's residence if the capacity assessor is at the adult's residence. Should not take any further steps with respect to the capacity assessment other than to note that the adult has refused to undergo or to continue with the capacity assessment, and must notify the person who has requested the capacity assessment that the adult refused to undergo or continue with the capacity assessment.
- 8) A capacity assessor may conduct a capacity assessment of an adult's capacity to make decisions with respect to a matter only if the capacity assessor is satisfied that a capacity assessment with respect to that matter is warranted.

- 9) The capacity assessor should also form an opinion as to whether service of an application for a guardianship or trusteeship order is likely to cause serious emotional or physical harm to the adult.
- 10) The capacity assessor will meet with the adult and should consider the ability of the adult to:
 - a) Understand the information that is relevant to a decision, and
 - b) Appreciate the reasonably foreseeable consequences of a decision, and a failure to make a decision.
 - c) Then form an opinion about whether the adult has the capacity to make decisions about personal or financial matters. The capacity assessor should take into account
 - Whether the adult has the ability to retain the information that is relevant to making decisions, and
 - Any other factors the capacity assessor considers appropriate.
- 11) If the capacity assessor is of the opinion that the adult does not have the ability to do as stated above (10) the capacity assessor should:
 - Consider whether the adult is likely to regain some or all of their capacity to make decisions about personal or financial matters and, if so, the time in which the adult is likely to regain capacity, and include this in the report a recommendation that another capacity assessment of the adult be conducted and state when.

Standards of conduct for capacity assessors Section 6

When conducting a capacity assessment, a capacity assessor should

- a) Comply with the guidelines for conducting capacity assessments established by the Minister;
- b) Exercise care and diligence
- c) Act in good faith
- d) Maintain their professional competency to conduct capacity assessments.
- e) Have take into account the fact that
 - the adult who is undergoing the capacity assessment is presumed to have the capacity to make decisions until the contrary is determined and is entitled to communicate by any means that enables the adult to be understood. The adult's way of communicating is irrelevant in determining the adult's capacity to make decisions.

Capacity assessment report (Section 5)

A capacity assessment report must be filled out using the appropriate form and must contain the information required.

Date of capacity assessment report Section 91

A capacity assessment report must be dated not more than 6 months before the date the application is started. Unless an application contains a request for the Court to accept a capacity assessment report that was conducted earlier.

Forms Sections (3, 4, 6, 7, 10 respectively)

- 1) The form for a capacity assessment report in respect of an application for a co decision making order is set out in **Form 3** in the Schedule.
- 2) The form for a capacity assessment report in respect of an application for a guardianship order or trusteeship order is set out in **Form 4** in the Schedule.
- 3) The form for an assessment of an adult's capacity to make decisions respecting the adult's health care for the purposes of section 87 of the Act is set out in **Form 6** in the Schedule.
- 4) The form for an assessment of an adult's capacity to make decisions respecting the adult's temporary admission to or discharge from a residential facility for the purposes of section 87 of the Act is set out in **Form 7** in the Schedule.
- 5) The form for a capacity assessment report for the purposes of section 96 of the Act is set out in **Form 10** in the Schedule.

Designation of health professions (Section 6)

The following health professions are designated as health professions whose members may be designated as capacity assessors:

- Professions of medical practitioners, psychologists, registered nurses, registered psychiatric and mental deficiency nurses, occupational therapists, and social workers under the Medical Profession Act and Health Professions Act.

Designation of capacity assessors Section 7 (1-4)

- 1) The following persons are designated as capacity assessors:
 - A person who is registered as a medical practitioner under the Medical Profession Act;
 - A psychologist who is a regulated member of the College of Alberta Psychologists under the Health Professions Act.
- 2) The Minister may designate a person as a capacity assessor if the person meets the following:
 - Is a regulated member of a college of a health profession of the following: profession of registered nurses, registered psychiatric and mental deficiency nurses, occupational therapists, and social workers under the Health Professions Act
 - Has successfully completed a course for capacity assessors
 - Meets any other requirements set by the Minister
- 3) The Minister may revoke the designation of a capacity assessor if:
 - They're satisfied that the person is no longer conducting capacity assessments, not conducting capacity assessments in accordance with the Act and the regulations, or for any other reason that the Minister considers warrants the revocation of the person's designation as a capacity assessor.
- 4) A list of persons who are designated as capacity assessors will be available to the public.

Fees section 9 (1-3)

- 1) A capacity assessor may charge a fee for a capacity assessment including the capacity assessment report up to a maximum of:
 - (a) \$500, if the capacity assessment relates exclusively to the adult's capacity to make decisions about either a personal matters **or** financial matters
 - Or**
 - (b) \$700, if the capacity assessment relates to the adult's capacity to make decisions about both personal matters **and** financial matters.
- 2) The Court may allow a higher fee for a capacity assessment on the basis of the complexity of the capacity assessment.

Payment of fees by Crown Section 10 (1-5)

- 1) Anybody who is applying for a co-decision making, guardianship or trusteeship order or for a review of an order may request the Crown to pay for the capacity assessment by submitting a request to the Public Guardian.
- 2) Once the Public Guardian receives this request a review of the financial situation of the person making the request and the adult in question are done to determine whether it would be a financial hardship for the person making the request or the adult to pay the fees.
- 3) If it is determined that financial hardship for the person making the request or the adult in question, the Public Guardian may recommend that the Crown pay the fees for the capacity assessment of the adult.
- 4) The Crown may pay the fees for only one capacity assessment of an adult in a calendar year.

Assessment Section 19(1) - Refer to Specific Decision making

Communication and assistance section 20 - Refer to Specific Decision making

Duty to provide information Section 21- Refer to Specific Decision making

Authorization by Public Guardian section 22 (1-3) - Refer to Specific Decision making

Under Exceptional Circumstances & if there is Significant Risk
Order directing capacity assessment Section 87 (1-3)

- 1) The Court may make an order
 - (a) on its own motion, or
 - (b) on the application of
 - (i) the applicant in the proceeding (family member, friend, concerned individual, etc)
 - (ii) a person who is required under this Part to be served with or sent the notice of the application by which the proceeding was started (any interested party's)
- (2) A person referred to in section (1)(b) may apply for an order with the Court
 - (a) a notice of application and hearing, in **Form 39**,
 - (b) an affidavit of the applicant setting out the reasons why the applicant believes it would be in the best interests of the adult in question for the Court to make the order including the reasons why the applicant believes
 - (i) the adult may not have capacity, and
 - (ii) the adult is at risk of suffering serious harm or financial loss if the order is not made
 - (c) any other documents that the applicant intends to rely on in support of the application.
- (3) An applicant will serve the documents on
 - (a) the adult who is the subject of the application, and
 - (b) any other persons as the court may direct or approve.
- (4) The Court is able to make a determination of capacity if the court determines that there is sufficient evidence to make the determination.