











decision maker may return the **DGOWOYQWKDQQWHOOHEWDOGVDOW** to the developmental centre within six months of leaving the developmental centre without the approval of the court. However, if the **DGOWOYQWKDQQWHOOHEWDOGVDOW** with the consent of his or her substitute decision maker, leaves the developmental centre and resides elsewhere for six months or more, the substitute decision maker cannot return the **DGOWOYQWKDQQWHOOHEWDOGVDOW** to the developmental centre without the approval of the court.

It should be noted that a **DGOWOYQWKDQQWHOOHEWDOGVDOW** decide to leave a developmental centre on his or her own if there is no substitute decision maker appointed to decide where that **DGOWOYQWKDQQWHOOHEWDOGVDOW** should live.

### **Apprehension Order**

There may be situations where an adult living with an intellectual disability refuses to live in accordance with the substitute decision maker's decision. In these circumstances, the substitute decision maker may apply to a justice of the peace or a provincial judge for an Order to apprehend the adult living with an intellectual disability and return that person to live where, with whom and under which conditions the substitute decision maker has decided.

To apply for an "Application and Order for Apprehension", please contact your nearest Provincial Court Office.

Where a substitute decision maker is granted an Apprehension Order, he or she must provide a copy of the Order to the Commissioner.

Any person named in an order may request the assistance of a peace officer in apprehending the adult living with an intellectual disability. The peace officer is required under *The Adults Living with an Intellectual Disability Act* to provide such assistance.

### **Limitations**

There are some limitations on the powers of a substitute decision maker for personal care. The limitations are:

- unless a substitute decision maker for personal care is authorized by the Commissioner, he or she cannot:
  - change arrangements regarding custody of or access to a child; or
  - commence divorce proceedings on behalf of a **DGOWOYQWKDQQWHOOHEWDOGVDOW**
- except for the Public Trustee, a substitute decision maker for personal care cannot settle a claim or legal proceeding (ex: finalize a personal injury claim) on behalf of a vulnerable person, whether or not legal proceedings have been commenced without first obtaining court approval.

- a substitute decision maker for personal care cannot give consent on a vulnerable person's behalf to:
  - medical treatment for the primary purpose of research;
  - sterilization that is not medically necessary for the protection of the vulnerable person's health;
  - the removal of tissue for transplant or medical education or research;
  - voluntary admissions to a psychiatric facility;
  - the adoption or guardianship of a child; or
  - participation in an activity or project whose primary purpose is research.
- a substitute decision maker for personal care does not have the power to give, refuse or withdraw consent to health care if the adult living with an intellectual disability, when capable, made a valid health care directive appointing a proxy to exercise the power or expressing a decision respecting the proposed health care.
- where an adult living with an intellectual disability is a patient in a psychiatric facility, *The Mental Health Act*, rather than *The Adults Living with an Intellectual Disability Act* applies; therefore a substitute decision maker's authority may be limited during admission.
- a substitute decision maker for personal care with the power to decide where the adult living with an intellectual disability should live will have this power suspended during the period of an emergency intervention taken under Part 3 of *the Act*.

## **What are the specific duties, considerations and limitations related to a Property Appointment?**

In addition to the general duties in exercising his or her powers, a substitute decision maker for property shall do the following:

- act diligently and in good faith as a fiduciary;
- exercise the degree of care, diligence and skill that a person of ordinary prudence would exercise in the conduct of his or her own affairs (where not receiving compensation);
- keep a record of all transactions involving the vulnerable person's property; and
- provide regular written reports to the Commissioner detailing his or her management of the vulnerable person's property. This includes filing an opening inventory, an annual accounting, and in some cases, meeting bond and surety requirements as required by the Commissioner (see below).

**Required expenditures:**

Subject to any terms and conditions of the appointment, a substitute decision maker for property shall make expenditures from the vulnerable person's property that are:

- reasonably necessary for the vulnerable person's own support, education and care;
- reasonably necessary for the support, education and care of the vulnerable person's dependents; and
- that are necessary to satisfy the vulnerable person's other legal obligations.

In making expenditures from a vulnerable person's property the following rules apply:

- the substitute decision maker must take into account the value of the property, the accustomed standard of living of the adult living with an intellectual disability and his/her dependents and the nature of other legal obligations;
- expenditures for the vulnerable person's dependents may be made only if the property is and will remain more than sufficient to provide for the expenditures of the adult living with an intellectual disability; and
- expenditures for the vulnerable person's other obligations may be made only if the property is and will remain more than sufficient to provide for the adult living with an intellectual disability and his or her dependents.

**Opening Inventory – Real and Personal Property Inventory on Appointment:**

Where appointed by the Commissioner, a substitute decision maker for property has six months to take control of the individual's property. Within that six month period (or sooner if requested by the Commissioner) the substitute decision maker must file a complete inventory and account of the vulnerable person's property, debts and liabilities.

**Accounting:**

The substitute decision maker is required to file, on an annual basis, a sworn affidavit and accounting of the vulnerable person's property. The accounting will need to include the particulars of the property including:

- the opening inventory which sets out the assets and their value;
- a statement of money received including when it was received, the amount, the source and the reason;
- a statement of money spent including the amount, when it was spent, who received it and why;



- a statement of assets sold, realized or acquired, the amount, date of sale or acquisition, and amount of any gain or loss; and
- a reconciliation and closing inventory for all assets; their value on the opening and closing dates; the costs of all assets; and a record of all gains, losses, sales acquisitions and disbursements.

### **Accounting on the death of a sole substitute decision maker**

On the death of the substitute decision maker, his or her executor or administrator must comply with the accounting requirements.

### **Accounting on the death of a joint substitute decision maker**

On the death of a joint substitute decision maker, the surviving substitute decision maker may exercise all the powers that had been granted jointly.

### **Accounting on the death of the adult living with an intellectual disability**

The substitute decision maker must provide a final accounting and deliver any property to the executor or administrator of the estate of the adult living with an intellectual disability.

### **Accounting on the expiration or termination of the substitute decision maker**

The substitute decision maker must provide a final accounting and deliver any property to the adult living with an intellectual disability or the replacement substitute decision maker (if one has been appointed).

### **Bonds and Sureties:**

Where a bond has been requested by the commissioner, the substitute decision maker for property must submit the bond with or without sureties in accordance with the Guidelines, Policies and Procedures on Bonds and Sureties for Substitute Decision Makers for Property.

The purpose of the bond is to provide assurance to the commissioner that the substitute decision maker will properly administer the person's financial affairs. If the vulnerable person's financial affairs are mismanaged, the Vulnerable Person's Commissioner may look to the substitute decision maker, the sureties and/or the surety company to compensate the adult living with an intellectual disability.

Where a bond is required, the substitute decision maker's authority does not begin until the bond is approved by the Vulnerable Person's Commissioner.

### **Limitations on Powers**

A substitute decision maker for property, unless he or she is the Public Trustee, may not settle a claim or proceeding (ex: finalize a claim relating to property damages) on behalf of an adult living with an intellectual disability, whether or not legal proceedings have been commenced, without the approval of the court.

## **Can a substitute decision maker receive compensation for services?**

Yes, in some circumstances and subject to the prior approval of the Commissioner, a substitute decision maker for property may receive compensation from the property of the adult living with an intellectual disability. A request to do so must be submitted to the Commissioner including the amount of compensation.

A SDM who receives compensation for managing the property shall exercise the degree of care, diligence and skill that a person in the business of managing the property of others is required to exercise.

Where the Public Trustee is the substitute decision maker, they receive compensation for their services from the vulnerable person's property (refer to the Public Trustee's "A Client Guide to The Public Trustee's Client Administration Section").

## **Can a substitute decision maker be held liable for decisions made or actions taken?**

Yes, a substitute decision maker for property is liable for damages that result from a breach of his or her duty under *the Act*. However, if determined by a court that the substitute decision maker nevertheless acted honestly, reasonably and diligently, they may be relieved from all or part of the liability.