

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF ONTARIO)**

BETWEEN:

DR. BRIAN CUTHBERTSON AND DR. GORDON RUBENFELD

APPELLANTS
(Appellants)

- and -

**HASSAN RASOULI BY HIS LITIGATION GUARDIAN AND SUBSTITUTE DECISION
MAKER, PARICHEHR SALASEL**

RESPONDENT
(Respondent)

- and -

**THE CONSENT AND CAPACITY BOARD, EUTHANASIA PREVENTION COALITION,
CANADIAN CRITICAL CARE SOCIETY, CANADIAN ASSOCIATION OF CRITICAL
CARE NURSES, ADVOCACY CENTRE FOR THE ELDERLY AND ARCH
DISABILITY LAW CENTRE, MENTAL HEALTH LEGAL COMMITTEE AND HIV &
AIDS LEGAL CLINIC ONTARIO and EVANGELICAL FELLOWSHIP OF CANADA**

INTERVENERS

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(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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PART I: STATEMENT OF FACTS

1. The Coalition of Advocacy Centre for the Elderly (ACE) and ARCH Disability Law Centre (ARCH) (“the Coalition”) agrees with the facts as stated by the Respondent.

PART II: QUESTIONS IN ISSUE

2. The issue central to this Appeal is whether the Appellant-physicians require consent or a determination from the Consent and Capacity Board (CCB) to withdraw life-sustaining treatment.

PART III: ARGUMENT

3. The Coalition raises the following points in argument:

- A. Low-income older adults and people with disabilities are subject to ageist and ableist attitudes, including negative perceptions about their quality of life;
- B. Any interpretation of the *Health Care Consent Act (HCCA)* and the common law must comply with the values promoted in the *Canadian Charter of Rights and Freedoms (Charter)*;
- C. Any interpretation of the *Health Care Consent Act* must comply with Canada’s international obligations; and
- D. Access to justice principles and the rule of law require that the treatment decision-making process set out in the *HCCA* be followed in end-of-life treatment decisions.

A. Social Context is Relevant to the Determination of the Issues in this Case

4. This case is about older adults and people with disabilities who are facing end-of-life treatment decisions. Older adults and people with disabilities are most likely to be disproportionately impacted by the outcome of this Appeal. Therefore, this Appeal requires a contextual approach, informed by the *Charter* values of substantive equality and autonomy, with specific attention to the way that treatment decision-making affects the lives of older adults and people with disabilities.

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 at ss. 7, 15, 32, 52(1) [*Charter*].
Law v Canada (Minister of Employment and Immigration), [1999] 1 SCR 497 at para 6 [Book of Authorities, Tab 10].

5. Ageism and ableism are expressions of systemic norms about older adults and people with disabilities that undermine their inherent personal value and worth.

6. Common ageist misperceptions include: older adults, by reason of their age, have nothing to contribute to society; older adults have a poor prospect for recovery; and older adults are presumed to be incapable of making treatment decisions. In a society that favours youth and being young, ageism flourishes:

Ageism, defined as negative images of older adults as dependent, vulnerable, unable to make appropriate decisions for themselves and making no contribution to society, is prevalent throughout our society. This kind of thinking is morally wrong, and it is legally wrong.

Rt. Hon. Beverly McLachlin, P.C., Chief Justice of Canada, “Elder Law: An Emerging Practice” (Lecture delivered at the 3rd Annual Canadian Conference on Elder Law, Vancouver, 10 November, 2007), (2009) 3 *Journal of International Aging Law & Policy* 1 at 4-5 [Book of Authorities, Tab 19].

7. Common ableist misperceptions include: people with disabilities are presumed to have poor a quality of life; disability is synonymous with suffering and decline; and death is more desirable to living with a disability. People with disabilities are subject to all manner of affronts to their dignity, are denied choices in their lives and are often hidden from public view:

It is an unfortunate truth that the history of disabled persons in Canada is largely one of exclusion and marginalization . . . This historical disadvantage has to a great extent been shaped and perpetuated by the notion that disability is an abnormality or flaw. As a result, disabled persons have not generally been afforded the “equal concern, respect and consideration” that s. 15(1) of the *Charter* demands. Instead, they have been subjected to paternalistic attitudes of pity and charity, and their entrance into the social mainstream has been conditional upon their emulation of able-bodied norms.

Eldridge v British Columbia (Attorney General), [1997] 3 SCR 624 at para 56 [*Eldridge*] [Book of Authorities, Tab 8] [emphasis added].

8. People with disabilities are more likely to be poor, accompanied by low education and lack of supports. People with disabilities continue to face systemic barriers that threaten their fundamental economic, social, civil, political and cultural inclusion.

Hon. Louise Arbour, “LaFontaine-Baldwin Lecture 2005: ‘Freedom from Want’ - From Charity to Entitlement” (Lecture delivered at the Dominion Institute, Quebec City, 4 March 2005) [Book of Authorities, Tab 16].

9. Discrimination operates in intersecting and overlapping ways. Older adults with disabilities experience unique barriers when it comes to enforcing their rights in the context of treatment decision-making.

Canada (Attorney General) v Mossop, [1993] 1 SCR 554 at para 153, L’Heureux-Dube J, dissenting [Book of Authorities, Tab 6].

10. Physicians may make treatment recommendations in an environment of austerity. In this context, older adults and people with disabilities are made most vulnerable, and subject to value-laden decisions that may ignore their personal value and worth. This context reinforces and entrenches the inherent power imbalances between physicians and patients.

11. Decisions to withdraw life-sustaining treatment may rely on stereotypes about the quality of life and prospect for recovery of older adults and people with disabilities. Procedural oversight of end-of-life treatment decisions will mitigate against inadvertent reliance on any unfounded presumptions.

B. Any Interpretation of the HCCA and the Common Law Must Comply with Charter Values

13. The *HCCA* must be interpreted and applied in a generous and purposive manner that promotes the substantive equality values underlying s.15 of the *Charter*, including inherent dignity, inclusion, and meaningful participation in decision-making. This Court has consistently held that where statutory language is ambiguous or reasonably capable of more than one meaning, an interpretation consistent with *Charter* values is to be preferred over an interpretation that is contrary to them.

Hills v. Canada (Attorney General), [1988] 1 SCR 513 at para 93 [Book of Authorities, Tab 9].

Bell ExpressVu Limited Partnership v. Rex, [2002] 2 SCR 559 at paras 28, 62 [Book of Authorities, Tab 2].

Willick v. Willick, [1994] 3 SCR 670 at paras 54, 55 [Book of Authorities, Tab 14].

14. The crux of the Appellants' argument is that the *HCCA* does not apply because withdrawing life-sustaining treatment does not fall within the *HCCA*. In that scenario, physicians do not require consent to withdraw this treatment. The Coalition does not agree.

15. The Coalition asserts that treatment is anything that is done for a health-related purpose, including the withdrawal of life-sustaining treatment. To the extent that there is any ambiguity in the definition of "treatment", this interpretation of the legislation complies with *Charter* values.

Health Care Consent Act, 1996, SO 1996, c 2, Sch A, s 2 [*HCCA*].

16. The foundation of the *HCCA*, and the primary mechanism by which it achieves its purposes, is consent. If older adults and people with disabilities and their substitute decision-makers (SDMs) are denied the right to give or withhold consent when physicians propose to withdraw life-sustaining treatment, then the essential purpose of the *HCCA* is undermined. Conversely, a broad and purposive interpretation of treatment will ensure that the interests of older adults and people with disabilities are continuously represented in circumstances where their dignity and autonomy are most at risk. Such an interpretation complies with the values underlying the *Charter*.

HCCA, *supra* para 15 at ss 1, 2, 10, 21, 37.

17. Equality concerns are engaged when the effects of a law are disproportionately visited on marginalized individuals whose ability to pursue a court challenge is diminished due to social or economic circumstances, or other substantial barriers accessing tribunals or courts. Older adults or people with disabilities who have an SDM do not have access to the same statutory protections as patients who make their own treatment decisions. Older adults and people with disabilities who have SDMs are not guaranteed that they will receive medical care that either respects their prior capable

wishes or, alternatively, accords with their best interests broadly considered. Allowing physicians to make the decision to withdraw life-sustaining treatment from patients without their consent or the consent of their SDMs is contrary to *Charter* values of substantive equality and procedural fairness.

18. An interpretation of the *HCCA* that is consistent with the values set out in s. 15 requires that procedural protection be afforded to protected groups. Inclusion is specifically central to an appreciation of equality for older persons and persons with disabilities. The Coalition submits that the procedural requirements of the *HCCA* protect those who are most vulnerable from potential abuse of power. The *HCCA* also ensures a significant role for supportive family members for those patients without capacity and enhances the autonomy of persons for whom treatment is proposed. An interpretation of the *HCCA* that is consistent with *Charter* values must provide for a meaningful process that is inclusive and respects the dignity and autonomy of older adults and persons with disabilities.

HCCA, supra para 15 at ss 1, 2, 10, 21, 37.

19. This Court has been unequivocal in eschewing a “thin and impoverished” formalistic interpretation of equality rights. Equal access to justice must be regarded as an integral aspect of the *Charter’s* equality protections. The denial of access to justice to persons who are the most marginalized, isolated and disempowered is a profound denial of equality before the law. The protection of substantive equality is a foundational constitutional principle that assists the interpretation and application of the *HCCA*, and cannot be confined to a s. 15 application.

P. Hughes, "Recognizing Equality as a Fundamental Constitutional Principle", (1999) 22 *Dalhousie Law Journal* 5 at 33 [Book of Authorities, Tab 18].
British Columbia (Public Service Employee Relations Commission) v British Columbia Government and Service Employees' Union (BCGSEU), [1999] 3 SCR 3 at paras 41, 81 [Meiorin] [Book of Authorities, Tab 4].
Eldridge, supra para 7 at paras 64, 73, [Book of Authorities, Tab 8].

20. It is well established that the common law must also be developed in a manner that is consistent with the values enshrined in the *Charter*, including the substantive equality guarantee. Where the principles underlying a common law rule are out of step with the values enshrined in

the *Charter*, the courts should scrutinize the rule closely and adapt it to make it consistent with *Charter* values.

Retail, Wholesale and Department Store Union, Local 580[R.W.D.S.U.] v Dolphin Delivery Ltd., [1986] 2 SCR 573 at para 25 [Book of Authorities, Tab 13].

21. This is a case about treatment decision-making: specifically a decision about withdrawing life-sustaining treatment. The appropriate mechanism to resolve conflicts between physicians and SDMs is legislatively mandated by the *HCCA*. Oversight by an independent third party ensures that the autonomy, independence and dignity of older adults and people with disabilities are not violated. If a physician is permitted to unilaterally override an SDM's refusal of consent to the withdrawal of treatment, then the physician has essentially usurped the authority of the *HCCA*. Moreover, informed consent to treatment decision-making would become meaningless.

C. Any Interpretation of the *HCCA* Must Comply with Canada's International Obligations

22. This Court has reiterated on numerous occasions the importance and relevance of international human rights instruments and international legal norms when interpreting domestic legislation. An interpretation of the *HCCA* that circumvents oversight by an independent tribunal would offend the international laws and principles which Canada has adopted.

R. v Sharpe, [2001] 1 SCR 45 at para 175 [Book of Authorities, Tab 12].
Baker v Canada (Minister of Citizenship and Immigration), [1999] 2 SCR 817 at para 70 [Book of Authorities, Tab 1].

23. Article 25 of the *Convention on the Rights of Persons with Disabilities (CRPD)* provides that States Parties recognize that people with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. The Coalition asserts that older adults and people with disabilities must enjoy equal access to health care, without reliance on stereotypical assumptions about their quality of life.

Convention on the Rights of Persons with Disabilities, 13 December 2006, 2515 UNTS 3 (in force 3 May 2008, ratified by Canada 11 March 2010), Art 25 [CRPD] [Book of Authorities, Tab 15].

24. Canada has adopted the *United Nations Principles for Older Adults*, which encourages governments to promote access to health care, social and legal services to ensure the dignity, autonomy and well-being of older adults.

United Nations Principles for Older Persons, General Assembly Resolution 46/91 of 16 December 1991, annex, Articles 1, 10-14, 17-18, online: UN Programme on Ageing <<http://www.un.org/esa/socdev/ageing/index.html>> [Book of Authorities, Tab 20].

D. Access to Justice and the Rule of Law

25. The rule of law is a foundational constitutional principle. The exclusion of marginalized groups, like low-income older adults and people with disabilities, from meaningful participation in adjudicative processes which impact their lives offends the rule of law. It thwarts the interests of justice to have rights that cannot be exercised by their intended beneficiaries.

British Columbia Government Employees' Union v. British Columbia (Attorney General), [1988] 2 SCR 214 at paras 24-26 [Book of Authorities, Tab 5].
British Columbia (Attorney General) v. Christie, [2007] 1 S.C.R. 873 at paras 16-17 [*Christie*] [Book of Authorities, Tab 3].
Lorne Sossin, "Access to Administrative Justice and Other Worries" in Colleen M Flood & Lorne Sossin, eds, *Administrative Law in Context*, 2nd ed (Toronto: Emond Montgomery, 2008), at 404 and 405 [Book of Authorities, Tab 17].

26. The Coalition submits that the *HCCA* provides a complete procedural code for low-income older adults and people with disabilities who seek to challenge unilateral decision-making about end-of-life treatment, where their SDM and physician disagree.

27. If informed consent to the withdrawal of treatment is not provided, the *HCCA* establishes an administrative process before the CCB that is accessible, expert, cost-efficient, and expedient for resolving these conflicts. The administrative process is of particular importance for low-income older adults, people with disabilities and their substitute decision-makers. Publicly funded representation may also be available to persons before the CCB.

HCCA, *supra* para 15 at s. 81.
Doré v. Barreau du Québec 2012 SCC 12 at paras 47, 48 [Book of Authorities, Tab 7].

28. The values of procedural fairness enshrined in s. 7 of the *Charter* are concerned with safeguards for the rights of older adults and people with disabilities. The *Charter* establishes that no one is to be deprived of life, liberty and security of the person except in accordance with the principles of fundamental justice. Section 7 has also been held to imply a right to counsel as an aspect of procedural fairness where life, liberty and security of the person are engaged. In addition to other benefits of administrative tribunals, this Court has recognized that a degree of deference to administrative decision-makers is justified based on the tribunal's expertise and proximity to the facts of the case. The Coalition submits that the CCB, unlike physicians, is not only legislatively mandated to determine conflicts between physicians and SDMs, but is also required to consider and balance the interests at stake in a way that complies with *Charter* values.

Christie, supra para 25 at para 25 [Book of Authorities, Tab 3].

HCCA, supra para 15 at ss 21, 37.

Dore, supra para 27 at para 54 [Book of Authorities, Tab 7].

R v Conway [2010] 1 S.C.R. 765 at paras 41, 78, 79 [Book of Authorities, Tab 11].

29. Requiring the representatives of older adults and people with disabilities to apply to court for an injunction to prevent withdrawal of life-sustaining treatment is a profound denial of access to justice and procedural fairness. It is unrealistic to expect that these marginalized communities will have the resources to pursue costly, inefficient and complex litigation. This Court must consider the economic, environmental and systemic barriers that bar older adults and people with disabilities from pursuing an emergency application for an injunction.

30. A broad and purposive interpretation of the *HCCA*'s procedural requirements is also supported by the persuasive authority of Canada's international commitments. The *CRPD* requires that States Parties establish accessible mechanisms through which vulnerable individuals can exercise and defend their rights. Articles 12 and 13 guarantee effective access to justice for people with disabilities, on an equal basis with others. Additionally, Article 8 of the *Universal Declaration of Human Rights* also requires that everyone has the right to an effective remedy by a competent tribunal for acts that violate fundamental rights.

CRPD, supra para 23 at Arts 8, 12, 13 [Book of Authorities, Tab 15].

Universal Declaration of Human Rights, GA Res. 217 (III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) Art. 8 [Book of Authorities, Tab 21].

Conclusion

31. Equal and meaningful access to administrative justice is essential for compliance with the rule of law, *Charter* values and international law commitments. The experience of poverty particularly hinders access to the courts for low-income older adults and persons with disabilities. The *HCCA's* central purposes and its protections would become merely illusory if a person is denied access to a meaningful process governing the withdrawal of life-sustaining treatment that is inclusive and respects the dignity and autonomy of older adults and persons with disabilities.

PART IV: COSTS SUBMISSIONS

32. The Coalition does not seek costs, and respectfully submits that no order for costs should be made against it or its members.

PART V: ORDER SOUGHT

33. The Coalition respectfully requests:

- (a) that it be granted the right to make oral submissions at the hearing of this appeal; and
- (b) that the appeal be dismissed.

All of which is respectfully submitted this 26th day of July, 2012

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PART VI - TABLE OF AUTHORITIES

CASES	PARA(s) IN FACTUM
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<i>Bell ExpressVu Limited Partnership v Rex</i> [2002] 2 SCR 559 (SCC).	13
<i>British Columbia (Attorney General) v. Christie</i> , [2007] 1 SCR 873.	25, 28
<i>British Columbia Government Employees Union v British Columbia (AG)</i> , [1988] 2 SCR 214 (SCC).	25
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<i>Canada (AG) v Mossop</i> , [1993] 1 SCR 554 (SCC).	9
<i>Doré v Barreau du Québec</i> , 2012 SCC 12 (SCC).	27, 28
<i>Eldridge v British Columbia (Attorney General)</i> , [1997] 3 SCR 624 (SCC).	7, 19
<i>Hills v Canada (AG)</i> , [1988] 1 SCR 513 (SCC).	13
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- United Nations Principles for Older Persons*, General Assembly Resolution 46/91 of 16 December 1991, annex, Articles 1, 10-14, 17-18, 24
online: UN Programme on Ageing
<<http://www.un.org/esa/socdev/ageing/index.html>>
[Book of Authorities, Tab 15].

PART VII – LEGISLATION

<p>Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.</p> <p>SCHEDULE B CONSTITUTION ACT, 1982</p> <p>PART I CANADIAN CHARTER OF RIGHTS AND FREEDOMS</p> <p>Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:</p> <p>[...]</p> <p>Legal Rights</p> <p>7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.</p> <p>Equality Rights</p> <p>15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.</p> <p>(2) Subsection (1) does not preclude any law, program or</p>	<p>Charte canadienne des droits et libertés, Partie 1, Loi constitutionnelle de 1982, annexe B de la Loi de 1982 sur le Canada (R-U), 1982, c 11.</p> <p>ANNEXE B LOI CONSTITUTIONNELLE de 1982</p> <p>PARTIE I CHARTE CANADIENNE DES DROITS ET LIBERTÉS</p> <p>Attendu que le Canada est fondé sur des principes qui reconnaissent la suprématie de Dieu et la primauté du droit :</p> <p>[...]</p> <p>Garanties juridiques</p> <p>7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.</p> <p>Droits à l'égalité</p> <p>15. (1) La loi ne fait acception de personne et s'applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques.</p>
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activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Application of Charter

32. (1) This Charter applies

- (a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and
- (b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

Exception

(2) Notwithstanding subsection (1), section 15 shall not have effect until three years after this section comes into force.

Primacy of Constitution of Canada

52. (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

(2) Le paragraphe (1) n'a pas pour effet d'interdire les lois, programmes ou activités destinés à améliorer la situation d'individus ou de groupes défavorisés, notamment du fait de leur race, de leur origine nationale ou ethnique, de leur couleur, de leur religion, de leur sexe, de leur âge ou de leurs déficiences mentales ou physiques.

Application de la charte

32. (1) La présente charte s'applique :

- a) au Parlement et au gouvernement du Canada, pour tous les domaines relevant du Parlement, y compris ceux qui concernent le territoire du Yukon et les territoires du Nord-Ouest;
- b) à la législature et au gouvernement de chaque province, pour tous les domaines relevant de cette législature.

Restriction

(2) Par dérogation au paragraphe (1), l'article 15 n'a d'effet que trois ans après l'entrée en vigueur du présent article.

Primauté de la Constitution du Canada

52. (1) La Constitution du Canada est la loi suprême du Canada; elle rend inopérantes les dispositions incompatibles de toute autre règle de droit.

Constitution du Canada

(2) La Constitution du Canada comprend :

- a) la Loi de 1982 sur le Canada, y compris la présente loi;

<p>Constitution of Canada</p> <p>(2) The Constitution of Canada includes</p> <ul style="list-style-type: none">(a) the Canada Act 1982, including this Act;(b) the Acts and orders referred to in the schedule; and(c) any amendment to any Act or order referred to in paragraph (a) or (b). <p>Amendments to Constitution of Canada</p> <p>(3) Amendments to the Constitution of Canada shall be made only in accordance with the authority contained in the Constitution of Canada.</p>	<p>b) les textes législatifs et les décrets figurant à l'annexe;</p> <p>c) les modifications des textes législatifs et des décrets mentionnés aux alinéas a) ou b).</p> <p>Modification</p> <p>(3) La Constitution du Canada ne peut être modifiée que conformément aux pouvoirs conférés par elle.</p>
<p>Health Care Consent Act, 1996, SO 1996, c 2, Sch A</p> <p>Purposes</p> <p>1. The purposes of this Act are,</p> <ul style="list-style-type: none">(a) to provide rules with respect to consent to treatment that apply consistently in all settings;(b) to facilitate treatment, admission to care facilities, and personal assistance services, for persons lacking the capacity to make decisions about such matters;(c) to enhance the autonomy of persons for whom treatment is proposed, persons for whom admission to a care facility is proposed and persons who are to receive personal assistance services by,<ul style="list-style-type: none">(i) allowing those who have been found to be incapable to apply to a tribunal for a review of	<p>Loi de 1996 sur le consentement aux soins de santé, LO 1996, c 2, ann A</p> <p>Objets</p> <p>1. Les objets de la présente loi sont les suivants :</p> <ul style="list-style-type: none">a) prévoir des règles en matière de consentement au traitement qui s'appliquent de façon uniforme dans tous les milieux;b) faciliter le traitement et l'admission à des établissements de soins des personnes qui n'ont pas la capacité de prendre des décisions concernant ces questions, et faciliter les services d'aide personnelle qui leur sont fournis;c) accroître l'autonomie des personnes pour lesquelles un traitement est proposé, de celles dont l'admission à un établissement de soins est proposée et de celles qui

<p>the finding,</p> <ul style="list-style-type: none">(ii) allowing incapable persons to request that a representative of their choice be appointed by the tribunal for the purpose of making decisions on their behalf concerning treatment, admission to a care facility or personal assistance services, and(iii) requiring that wishes with respect to treatment, admission to a care facility or personal assistance services, expressed by persons while capable and after attaining 16 years of age, be adhered to; <ul style="list-style-type: none">(d) to promote communication and understanding between health practitioners and their patients or clients;(e) to ensure a significant role for supportive family members when a person lacks the capacity to make a decision about a treatment, admission to a care facility or a personal assistance service; and(f) to permit intervention by the Public Guardian and Trustee only as a last resort in decisions on behalf of incapable persons concerning treatment, admission to a care facility or personal assistance services. <p>1996, c. 2, Sched. A, s. 1.</p>	<p>doivent recevoir des services d'aide personnelle :</p> <ul style="list-style-type: none">(i) en permettant à celles dont l'incapacité a été constatée de demander, par voie de requête, à un tribunal administratif de réviser cette constatation,(ii) en permettant aux incapables de demander au tribunal administratif de nommer un représentant de leur choix pour prendre en leur nom des décisions concernant le traitement, leur admission à un établissement de soins ou des services d'aide personnelle,(iii) en exigeant le respect des désirs que des personnes ont exprimés à l'égard d'un traitement, de leur admission à un établissement de soins ou des services d'aide personnelle devant leur être fournis, lorsqu'elles étaient capables et avaient au moins 16 ans révolus; <ul style="list-style-type: none">d) favoriser la communication et la compréhension entre les praticiens de la santé et leurs malades ou clients;e) veiller à ce que les membres de la famille qui soutiennent des personnes jouent un rôle important lorsque celles-ci n'ont plus la capacité de prendre une décision concernant un traitement, leur admission à un établissement de soins ou un service d'aide personnelle;
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<p>[...]</p> <p>Interpretation</p> <p>2. (1) In this Act, “attorney for personal care” means an attorney under a power of attorney for personal care given under the <i>Substitute Decisions Act, 1992</i>; (“procureur au soin de la personne”) “Board” means the Consent and Capacity Board; (“Commission”) “capable” means mentally capable, and “capacity” has a corresponding meaning; (“capable”, “capacité”) “care facility” means, (a) a long-term care home as defined in the <i>Long-Term Care Homes Act, 2007</i>, or (b) a facility prescribed by the regulations as a care facility; (“établissement de soins”) “community treatment plan” has the same meaning as in the <i>Mental Health Act</i>; (“plan de traitement en milieu communautaire”) “course of treatment” means a series or sequence of similar treatments administered to a person over a period of time for a particular health problem; (“série de traitements”) “evaluator” means, in the circumstances prescribed by the regulations, (a) a member of the College of</p>	<p>f) permettre l’intervention, mais seulement en dernier ressort, du Tuteur et curateur public dans les décisions concernant le traitement, l’admission à un établissement de soins ou des services d’aide personnelle, qui sont prises au nom des incapables. 1996, chap. 2, annexe A, art. 1.</p> <p>[...]</p> <p>Interprétation</p> <p>2. (1) Les définitions qui suivent s’appliquent à la présente loi.</p> <p>«appréciateur» S’entend, dans les circonstances que prescrivent les règlements, de l’une ou l’autre des personnes suivantes :</p> <p>a) un membre de l’Ordre des audiologistes et des orthophonistes de l’Ontario; b) un membre de l’Ordre des diététistes de l’Ontario; c) un membre de l’Ordre des infirmières et infirmiers de l’Ontario; d) un membre de l’Ordre des ergothérapeutes de l’Ontario; e) un membre de l’Ordre des médecins et chirurgiens de l’Ontario; f) un membre de l’Ordre des physiothérapeutes de l’Ontario; g) un membre de l’Ordre des psychologues de l’Ontario; h) un membre d’une catégorie de personnes que les règlements prescrivent comme étant des appréciateurs. («evaluator»)</p> <p>«bénéficiaire» Personne qui doit recevoir un ou plusieurs services d’aide personnelle :</p> <p>a) soit dans un foyer de soins de longue durée au sens de la <i>Loi</i></p>
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<p>Audiologists and Speech-Language Pathologists of Ontario,</p> <p>(b) a member of the College of Dietitians of Ontario,</p> <p>(c) a member of the College of Nurses of Ontario,</p> <p>(d) a member of the College of Occupational Therapists of Ontario,</p> <p>(e) a member of the College of Physicians and Surgeons of Ontario,</p> <p>(f) a member of the College of Physiotherapists of Ontario,</p> <p>(g) a member of the College of Psychologists of Ontario, or</p> <p>(h) a member of a category of persons prescribed by the regulations as evaluators; (“appréciateur”)</p> <p>“guardian of the person” means a guardian of the person appointed under the <i>Substitute Decisions Act, 1992</i>; (“tuteur à la personne”)</p> <p>“health practitioner” means a member of a College under the <i>Regulated Health Professions Act, 1991</i>, a naturopath registered as a drugless therapist under the <i>Drugless Practitioners Act</i> or a member of a category of persons prescribed by the regulations as health practitioners; (“praticien de la santé”)</p> <p>Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “health practitioner” is amended by striking out “a naturopath registered as a drugless therapist under the <i>Drugless Practitioners Act</i>”. See: 2009, c. 26, ss. 10 (2), 27 (2).</p> <p>“hospital” means a private hospital as defined in the <i>Private Hospitals Act</i> or a hospital as defined in the <i>Public</i></p>	<p><i>de 2007 sur les foyers de soins de longue durée</i>;</p> <p>b) soit dans un endroit que prescrivent les règlements, dans les circonstances que prescrivent les règlements;</p> <p>c) soit dans le cadre d’un programme que prescrivent les règlements, dans les circonstances que prescrivent les règlements;</p> <p>d) soit d’un fournisseur que prescrivent les règlements, dans les circonstances que prescrivent les règlements. («recipient»)</p> <p>«capable» Mentalement capable. Le substantif «capacité» a un sens correspondant. («capable», «capacity»)</p> <p>«Commission» La Commission du consentement et de la capacité. («Board»)</p> <p>«établissement de soins» S’entend, selon le cas :</p> <p>a) d’un foyer de soins de longue durée au sens de la <i>Loi de 2007 sur les foyers de soins de longue durée</i>;</p> <p>b) d’un établissement que les règlements prescrivent comme étant un établissement de soins. («care facility»)</p> <p>«établissement psychiatrique» S’entend au sens de la <i>Loi sur la santé mentale</i>. («psychiatric facility»)</p> <p>«hôpital» Hôpital privé au sens de la <i>Loi sur les hôpitaux privés</i> ou hôpital au sens de la <i>Loi sur les hôpitaux publics</i>. («hospital»)</p> <p>«incapable» Mentalement incapable. Les substantifs «incapable» et «incapacité» ont un sens correspondant. («incapable», «incapacity»)</p> <p>«plan de traitement» Plan qui a les</p>
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<p><i>Hospitals Act</i>; (“hôpital”)</p> <p>“incapable” means mentally incapable, and “incapacity” has a corresponding meaning; (“incapable”, “incapacité”)</p> <p>“mental disorder” has the same meaning as in the <i>Mental Health Act</i>; (“trouble mental”)</p> <p>“personal assistance service” means assistance with or supervision of hygiene, washing, dressing, grooming, eating, drinking, elimination, ambulation, positioning or any other routine activity of living, and includes a group of personal assistance services or a plan setting out personal assistance services to be provided to a person, but does not include anything prescribed by the regulations as not constituting a personal assistance service; (“service d’aide personnelle”)</p> <p>“plan of treatment” means a plan that,</p> <ul style="list-style-type: none">(a) is developed by one or more health practitioners,(b) deals with one or more of the health problems that a person has and may, in addition, deal with one or more of the health problems that the person is likely to have in the future given the person’s current health condition, and(c) provides for the administration to the person of various treatments or courses of treatment and may, in addition, provide for the withholding or withdrawal of treatment in light of the person’s current health condition; (“plan de traitement”)<p>“psychiatric facility” has the same meaning as in the <i>Mental Health Act</i>; (“établissement psychiatrique”)</p>	<p>caractéristiques suivantes :</p> <ul style="list-style-type: none">a) il est élaboré par un ou plusieurs praticiens de la santé;b) il porte sur un ou plusieurs problèmes de santé qu’une personne présente et peut également porter sur un ou plusieurs problèmes de santé que la personne présentera vraisemblablement à l’avenir étant donné son état de santé actuel;c) il prévoit l’administration à la personne de divers traitements ou séries de traitements et peut également prévoir, en fonction de l’état de santé actuel de la personne, le refus d’administrer un traitement ou le retrait d’un traitement. («plan of treatment») <p>«plan de traitement en milieu communautaire» S’entend au sens de la <i>Loi sur la santé mentale</i>. («community treatment plan»)</p> <p>«praticien de la santé» Membre d’un ordre visé par la <i>Loi de 1991 sur les professions de la santé réglementées</i>, naturopathe inscrit à titre de thérapeute ne prescrivant pas de médicaments aux termes de la <i>Loi sur les praticiens ne prescrivant pas de médicaments</i> ou membre d’une catégorie de personnes que les règlements prescrivent comme étant des praticiens de la santé. («health practitioner»)</p> <p>Remarque : Le jour que le lieutenant-gouverneur fixe par proclamation, la définition de «praticien de la santé» est modifiée par suppression de «, naturopathe inscrit à titre de thérapeute ne prescrivant pas de médicaments aux termes de la Loi sur les praticiens ne prescrivant pas de médicaments». Voir : 2009, chap. 26, par. 10 (2) et 27 (2).</p>
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<p>“recipient” means a person who is to be provided with one or more personal assistance services,</p> <ul style="list-style-type: none">(a) in a long-term care home as defined in the <i>Long-Term Care Homes Act, 2007</i>,(b) in a place prescribed by the regulations in the circumstances prescribed by the regulations,(c) under a program prescribed by the regulations in the circumstances prescribed by the regulations, or(d) by a provider prescribed by the regulations in the circumstances prescribed by the regulations; (“bénéficiaire”)<p>“regulations” means the regulations made under this Act; (“règlements”)</p><p>“treatment” means anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other health-related purpose, and includes a course of treatment, plan of treatment or community treatment plan, but does not include,</p><ul style="list-style-type: none">(a) the assessment for the purpose of this Act of a person’s capacity with respect to a treatment, admission to a care facility or a personal assistance service, the assessment for the purpose of the <i>Substitute Decisions Act, 1992</i> of a person’s capacity to manage property or a person’s capacity for personal care, or the assessment of a person’s capacity for any other purpose,(b) the assessment or examination of a person to determine the general nature of the person’s condition,(c) the taking of a person’s health history,	<p>«procureur au soin de la personne» Procureur constitué en vertu d’une procuration relative au soin de la personne donnée en vertu de la <i>Loi de 1992 sur la prise de décisions au nom d’autrui</i>. («attorney for personal care»)</p> <p>«règlements» Les règlements pris en application de la présente loi. («regulations»)</p> <p>«série de traitements» Série ou suite de traitements semblables administrés à une personne au cours d’une certaine période en raison d’un problème de santé particulier. («course of treatment»)</p> <p>«service d’aide personnelle» S’entend de l’aide fournie relativement à une activité courante de la vie, notamment les soins d’hygiène ou le fait de se laver, de s’habiller, de faire sa toilette, de manger, de boire, d’éliminer, de se déplacer ou de prendre une position, ou de la surveillance de l’activité. S’entend en outre d’un ensemble de services d’aide personnelle ou d’un programme énonçant les services d’aide personnelle qui doivent être fournis à une personne. Est toutefois exclu de la présente définition tout ce que les règlements prescrivent comme ne constituant pas un service d’aide personnelle. («personal assistance service»)</p> <p>«traitement» S’entend de tout ce qui est fait dans un but thérapeutique, préventif, palliatif, diagnostique ou esthétique, ou dans un autre but relié au domaine de la santé, y compris une série de traitements, un plan de traitement ou un plan de traitement en milieu communautaire. Est toutefois exclu de la présente définition ce qui suit :</p> <ul style="list-style-type: none">a) l’évaluation, pour l’application
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- (d) the communication of an assessment or diagnosis,
- (e) the admission of a person to a hospital or other facility,
- (f) a personal assistance service,
- (g) a treatment that in the circumstances poses little or no risk of harm to the person,
- (h) anything prescribed by the regulations as not constituting treatment. (“traitement”) 1996, c. 2, Sched. A, s. 2 (1); 2000, c. 9, s. 31; 2007, c. 8, s. 207 (1); 2009, c. 26, s. 10 (1); 2009, c. 33, Sched. 18, s. 10 (1).

Refusal of consent

(2) A reference in this Act to refusal of consent includes withdrawal of consent. 1996, c. 2, Sched. A, s. 2 (2).

de la présente loi, de la capacité d’une personne à l’égard d’un traitement, de son admission à un établissement de soins ou d’un service d’aide personnelle, l’évaluation, pour l’application de la *Loi de 1992 sur la prise de décisions au nom d’autrui*, de la capacité d’une personne à gérer ses biens ou à prendre soin de sa personne, ou l’évaluation de la capacité d’une personne à tout autre égard;

- b) l’évaluation ou l’examen d’une personne pour déterminer son état général;
- c) l’obtention des antécédents en matière de santé d’une personne;
- d) la communication d’une évaluation ou d’un diagnostic;
- e) l’admission d’une personne à un hôpital ou à un autre établissement;
- f) un service d’aide personnelle;
- g) un traitement qui, dans les circonstances, présente peu ou ne présente pas de risque d’effets néfastes pour la personne;
- h) tout ce que les règlements prescrivent comme ne constituant pas un traitement. («treatment»)

«trouble mental» S’entend au sens de la *Loi sur la santé mentale*. («mental disorder»)

«tuteur à la personne» Tuteur à la personne nommé en vertu de la *Loi de 1992 sur la prise de décisions au nom d’autrui*. («guardian of the person») 1996, chap. 2, annexe A, par. 2 (1); 2000, chap. 9, art. 31; 2007, chap. 8, par. 207 (1); 2009, chap. 26, par. 10 (1); 2009, chap.

<p>[...]</p> <p>No treatment without consent</p> <p>10. (1) A health practitioner who proposes a treatment for a person shall not administer the treatment, and shall take reasonable steps to ensure that it is not administered, unless,</p> <p>(a) he or she is of the opinion that the person is capable with respect to the treatment, and the person has given consent; or</p> <p>(b) he or she is of the opinion that the person is incapable with respect to the treatment, and the person's substitute decision-maker has given consent on the person's behalf in accordance with this Act. 1996, c. 2, Sched. A, s. 10 (1).</p> <p>Opinion of Board or court governs</p> <p>(2) If the health practitioner is of the opinion that the person is incapable with respect to the treatment, but the person is found to be capable with respect to the treatment by the Board on an application for review of the health practitioner's finding, or by a court on an appeal of the Board's decision, the health practitioner shall not administer the treatment, and shall take reasonable steps to ensure that it is not administered, unless the person has given consent. 1996, c. 2, Sched. A, s. 10 (2).</p>	<p>33, annexe 18, par. 10 (1).</p> <p>Refus d'un consentement</p> <p>(2) Toute mention, dans la présente loi, du refus d'un consentement s'entend également du retrait d'un consentement. 1996, chap. 2, annexe A, par. 2 (2).</p> <p>[...]</p> <p>Aucun traitement sans consentement</p> <p>10. (1) Le praticien de la santé qui propose un traitement pour une personne ne doit pas l'administrer et doit prendre des mesures raisonnables pour veiller à ce qu'il ne soit pas administré, sauf, selon le cas :</p> <p>a) s'il est d'avis que la personne est capable à l'égard du traitement, et qu'elle a donné son consentement;</p> <p>b) s'il est d'avis que la personne est incapable à l'égard du traitement, et que le mandataire spécial de la personne a donné son consentement au nom de celle-ci conformément à la présente loi. 1996, chap. 2, annexe A, par. 10 (1).</p> <p>Primauté de l'avis de la Commission ou du tribunal</p> <p>(2) Si le praticien de la santé est d'avis que la personne est incapable à l'égard du traitement, mais que la Commission, à la suite d'une requête en révision de la constatation du praticien de la santé, ou un tribunal, à la suite d'un appel de la décision de la Commission, constate que la personne est capable à l'égard du traitement, le praticien de la santé ne doit pas administrer le traitement et doit prendre des mesures raisonnables pour veiller à ce qu'il ne soit pas administré, sauf si la personne a donné son consentement. 1996, chap. 2, annexe A, par. 10 (2).</p>
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[...]

Principles for giving or refusing consent

21. (1) A person who gives or refuses consent to a treatment on an incapable person's behalf shall do so in accordance with the following principles:

1. If the person knows of a wish applicable to the circumstances that the incapable person expressed while capable and after attaining 16 years of age, the person shall give or refuse consent in accordance with the wish.

2. If the person does not know of a wish applicable to the circumstances that the incapable person expressed while capable and after attaining 16 years of age, or if it is impossible to comply with the wish, the person shall act in the incapable person's best interests. 1996, c. 2, Sched. A, s. 21 (1).

Best interests

(2) In deciding what the incapable person's best interests are, the person who gives or refuses consent on his or her behalf shall take into consideration,

(a) the values and beliefs that the person knows the incapable person held when capable and believes he or she would still act on if capable;

(b) any wishes expressed by the incapable person with respect to the treatment that are not required to be followed under paragraph 1 of subsection (1); and

(c) the following factors:

1. Whether the treatment is likely to,
 - i. improve the incapable person's condition or well-being,
 - ii. prevent the incapable person's condition or well-being from deteriorating, or
 - iii. reduce the extent to which, or the rate at

[...]

Principes devant guider le consentement ou le refus de celui-ci

21. (1) La personne qui donne ou refuse son consentement à un traitement au nom d'un incapable le fait conformément aux principes suivants :

1. Si elle sait que l'incapable, lorsqu'il était capable et avait au moins 16 ans révolus, a exprimé un désir applicable aux circonstances, elle donne ou refuse son consentement conformément au désir exprimé.

2. Si elle ne sait pas si l'incapable, lorsqu'il était capable et avait au moins 16 ans révolus, a exprimé un désir applicable aux circonstances, ou s'il est impossible de se conformer au désir, elle agit dans l'intérêt véritable de l'incapable. 1996, chap. 2, annexe A, par. 21 (1).

Intérêt véritable

(2) Lorsqu'elle décide de ce qui est dans l'intérêt véritable de l'incapable, la personne qui donne ou refuse son consentement au nom de celui-ci tient compte de ce qui suit :

a) les valeurs et les croyances qu'elle sait que l'incapable avait lorsqu'il était capable et conformément auxquelles elle croit qu'il agirait s'il était capable;

b) les désirs qu'elle sait que l'incapable a exprimés à l'égard du traitement et auxquels il n'est pas obligatoire de se conformer aux termes de la disposition 1 du paragraphe (1);

c) les facteurs suivants :

1. S'il est vraisemblable ou non que le traitement, selon le cas :

- i. améliorera l'état ou le bien-être de l'incapable,
- ii. empêchera la détérioration de l'état ou du bien-être de l'incapable,
- iii. diminuera l'ampleur selon laquelle ou

which, the incapable person's condition or well-being is likely to deteriorate.
2. Whether the incapable person's condition or well-being is likely to improve, remain the same or deteriorate without the treatment.
3. Whether the benefit the incapable person is expected to obtain from the treatment outweighs the risk of harm to him or her.
4. Whether a less restrictive or less intrusive treatment would be as beneficial as the treatment that is proposed. 1996, c. 2, Sched. A, s. 21 (2).

[...]

Application to determine compliance with s. 21

37. (1) If consent to a treatment is given or refused on an incapable person's behalf by his or her substitute decision-maker, and if the health practitioner who proposed the treatment is of the opinion that the substitute decision-maker did not comply with section 21, the health practitioner may apply to the Board for a determination as to whether the substitute decision-maker complied with section 21. 1996, c. 2, Sched. A, s. 37 (1).

Parties

(2) The parties to the application are:

1. The health practitioner who proposed the treatment.
2. The incapable person.
3. The substitute decision-maker.
4. Any other person whom the Board specifies. 1996, c. 2, Sched. A, s. 37 (2).

Power of Board

(3) In determining whether the substitute decision-maker complied with section 21, the Board may substitute its opinion for that of the substitute decision-maker. 1996, c. 2, Sched. A, s. 37 (3).

le rythme auquel l'état ou le bien-être de l'incapable se détériorera vraisemblablement.
2. S'il est vraisemblable ou non que l'état ou le bien-être de l'incapable s'améliorera, restera le même ou se détériorera sans le traitement.
3. Si l'effet bénéfique prévu du traitement l'emporte ou non sur le risque d'effets néfastes pour l'incapable.
4. Si un traitement moins contraignant ou moins perturbateur aurait ou non un effet aussi bénéfique que celui qui est proposé. 1996, chap. 2, annexe A, par. 21 (2).

[...]

Requête en vue de déterminer si l'art. 21 est observé

37. (1) Si le mandataire spécial d'un incapable donne ou refuse son consentement à un traitement au nom de celui-ci, et que le praticien de la santé qui a proposé le traitement est d'avis que le mandataire spécial ne s'est pas conformé à l'article 21, le praticien de la santé peut, par voie de requête, demander à la Commission de déterminer si le mandataire spécial s'est conformé à l'article 21. 1996, chap. 2, annexe A, par. 37 (1).

Parties

(2) Sont parties à la requête les personnes suivantes :

1. Le praticien de la santé qui a proposé le traitement.
2. L'incapable.
3. Le mandataire spécial.
4. Toute autre personne que précise la Commission. 1996, chap. 2, annexe A, par. 37 (2).

Pouvoir de la Commission

(3) Lorsqu'elle détermine si le mandataire spécial s'est conformé à l'article 21, la Commission peut substituer

Directions

(4) If the Board determines that the substitute decision-maker did not comply with section 21, it may give him or her directions and, in doing so, shall apply section 21. 1996, c. 2, Sched. A, s. 37 (4).

Time for compliance

(5) The Board shall specify the time within which its directions must be complied with. 1996, c. 2, Sched. A, s. 37 (5).

Deemed not authorized

(6) If the substitute decision-maker does not comply with the Board's directions within the time specified by the Board, he or she shall be deemed not to meet the requirements of subsection 20 (2). 1996, c. 2, Sched. A, s. 37 (6).

Subsequent substitute decision-maker

(6.1) If, under subsection (6), the substitute decision-maker is deemed not to meet the requirements of subsection 20 (2), any subsequent substitute decision-maker shall, subject to subsections (6.2) and (6.3), comply with the directions given by the Board on the application within the time specified by the Board. 2000, c. 9, s. 35.

Application for directions

(6.2) If a subsequent substitute decision-maker knows of a wish expressed by the incapable person with respect to the treatment, the substitute decision-maker may, with leave of the Board, apply to the Board for directions under section 35. 2000, c. 9, s. 35.

Inconsistent directions

(6.3) Directions given by the Board under section 35 on a subsequent substitute decision-maker's application brought with leave under subsection (6.2) prevail over inconsistent directions given under

son opinion à celle du mandataire spécial. 1996, chap. 2, annexe A, par. 37 (3).

Directives

(4) Si la Commission détermine que le mandataire spécial ne s'est pas conformé à l'article 21, elle peut lui donner des directives et, ce faisant, met en application l'article 21. 1996, chap. 2, annexe A, par. 37 (4).

Délai prévu pour se conformer

(5) La Commission précise le délai prévu pour se conformer à ses directives. 1996, chap. 2, annexe A, par. 37 (5).

Mandataire spécial réputé non autorisé

(6) Si le mandataire spécial ne se conforme pas aux directives de la Commission dans le délai que celle-ci a précisé, il est réputé ne pas satisfaire aux exigences du paragraphe 20 (2). 1996, chap. 2, annexe A, par. 37 (6).

Mandataire spécial subséquent

(6.1) Si, aux termes du paragraphe (6), le mandataire spécial est réputé ne pas satisfaire aux exigences du paragraphe 20 (2), tout mandataire spécial subséquent, sous réserve des paragraphes (6.2) et (6.3), se conforme aux directives données par la Commission relativement à la requête, dans le délai précisé par la Commission. 2000, chap. 9, art. 35.

Requête en vue d'obtenir des directives

(6.2) Si un mandataire spécial subséquent a connaissance d'un désir exprimé par l'incapable à l'égard du traitement, il peut, par voie de requête, demander des directives à la Commission en vertu de l'article 35, si celle-ci l'y autorise. 2000, chap. 9, art. 35.

Directives incompatibles

(6.3) Les directives données par la Commission en vertu de l'article 35

subsection (4) to the extent of the inconsistency. 2000, c. 9, s. 35.

P.G.T.

(7) If the substitute decision-maker who is given directions is the Public Guardian and Trustee, he or she is required to comply with the directions, and subsection (6) does not apply to him or her. 1996, c. 2, Sched. A, s. 37 (7).

Deemed application concerning capacity

37.1 An application to the Board under section 33, 34, 35, 36 or 37 shall be deemed to include an application to the Board under section 32 with respect to the person's capacity to consent to treatment proposed by a health practitioner unless the person's capacity to consent to such treatment has been determined by the Board within the previous six months. 2000, c. 9, s. 36.

[...]

Counsel for incapable person

81. (1) If a person who is or may be incapable with respect to a treatment, managing property, admission to a care facility or a personal assistance service is a party to a proceeding before the Board and does not have legal representation,

- (a) the Board may direct Legal Aid Ontario to arrange for legal representation to be provided for the person; and
- (b) the person shall be deemed to have capacity to retain and instruct counsel. 1996, c. 2, Sched. A, s. 81 (1); 2009, c. 33, Sched. 18, ss. 10 (3, 4).

relativement à la requête d'un mandataire spécial subséquent présentée sur autorisation en vertu du paragraphe (6.2) l'emportent sur les directives incompatibles données en vertu du paragraphe (4). 2000, chap. 9, art. 35.

Tuteur et curateur public

(7) Si le mandataire spécial qui reçoit des directives est le Tuteur et curateur public, il est tenu de se conformer à ces directives, et le paragraphe (6) ne s'applique pas à lui. 1996, chap. 2, annexe A, par. 37 (7).

Requête réputée une requête sur la capacité

37.1 La requête présentée à la Commission en vertu de l'article 33, 34, 35, 36 ou 37 est réputée comprendre une requête présentée à la Commission en vertu de l'article 32 à l'égard de la capacité de la personne de consentir à un traitement proposé par un praticien de la santé, sauf si la capacité de la personne de consentir à ce traitement a été déterminée par la Commission au cours des six mois précédents. 2000, chap. 9, art. 36.

[...]

Avocat représentant l'incapable

81. (1) Si une personne qui est ou peut être incapable à l'égard d'un traitement, de la gestion de ses biens, de son admission à un établissement de soins ou d'un service d'aide personnelle est partie à une instance devant la Commission et n'a pas de représentant en justice :

- a) d'une part, la Commission peut ordonner qu'Aide juridique Ontario prenne des dispositions pour que soient fournis à la personne les services d'un représentant en justice;
- b) d'autre part, la personne est

Responsibility for legal fees

(2) If legal representation is provided for a person in accordance with clause (1) (a) and no certificate is issued under the *Legal Aid Services Act, 1998* in connection with the proceeding, the person is responsible for the legal fees. 1996, c. 2, Sched. A, s. 81 (2); 1998, c. 26, s. 104.

Same

(2.1) Nothing in subsection (2) affects any right of the person to an assessment of a solicitor's bill under the *Solicitors Act* or other review of the legal fees and, if it is determined that the person is incapable of managing property, the assessment or other review may be sought on behalf of the person by,

- (a) the person's guardian of property appointed under the *Substitute Decisions Act, 1992*; or
- (b) the person's attorney under a continuing power of attorney for property given under the *Substitute Decisions Act, 1992*. 2009, c. 33, Sched. 18, s. 10 (5).

Child in secure treatment program

(3) If a child who has been admitted to a secure treatment program under section 124 of the *Child and Family Services Act* is a party to a proceeding before the Board, the Children's Lawyer shall provide legal representation for the child unless the Children's Lawyer is satisfied that another person will provide legal representation for the child. 1996, c. 2, Sched. A, s. 81 (3).

réputée avoir la capacité de retenir les services d'un avocat et de le mandater. 1996, chap. 2, annexe A, par. 81 (1); 2009, chap. 33, annexe 18, par. 10 (3) et (4).

Paiement des frais de justice

(2) Si les services d'un représentant en justice sont fournis à une personne conformément à l'alinéa (1) a) et qu'aucun certificat n'est délivré en vertu de la *Loi de 1998 sur les services d'aide juridique* relativement à l'instance, les frais de justice sont à la charge de la personne. 1996, chap. 2, annexe A, par. 81 (2); 1998, chap. 26, art. 104.

Idem

(2.1) Le paragraphe (2) n'a pas pour effet de porter atteinte aux droits de la personne de faire liquider le mémoire d'un procureur en vertu de la *Loi sur les procureurs* ou de faire autrement examiner les frais de justice et, s'il est établi que la personne est incapable de gérer ses biens, la liquidation ou l'autre examen peut être demandé au nom de celle-ci par :

- a) soit son tuteur aux biens nommé en vertu de la *Loi de 1992 sur la prise de décisions au nom d'autrui*;
- b) soit son procureur constitué en vertu d'une procuration perpétuelle relative aux biens donnée en vertu de la *Loi de 1992 sur la prise de décisions au nom d'autrui*. 2009, chap. 33, annexe 18, par. 10 (5).

Enfant dans un programme de traitement en milieu fermé

(3) Si un enfant qui a été placé dans un programme de traitement en milieu fermé en vertu de l'article 124 de la *Loi sur les services à l'enfance et à la famille* est partie à une instance devant la

	<p>Commission, l'avocat des enfants assure la représentation en justice de l'enfant à moins qu'il ne soit convaincu qu'une autre personne le fera. 1996, chap. 2, annexe A, par. 81 (3).</p>
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