

# WHAT CAREGIVERS NEED TO KNOW ABOUT ADULT GUARDIANSHIP\*

**Written by: Rachel Merucci, Licensed Paralegal**

**\*Information applies to residents of Ontario, Canada only.**

*About 5 years ago (2018), I was faced with the challenge of jumping into caregiving together with my dad, who was quickly losing the ability to care for my mom (his wife) later diagnosed with severe dementia (suspected Alzheimer's). My parents refused all help, and by the time I was "allowed" into their world my mother was not "mentally capable" of creating a Power of Attorney (POA) of any kind.*

*With much research, pieces of information eventually led me to the idea of "Adult Guardianship". It was (and still is) difficult to find a lawyer providing this service. And the legal fee to attempt the Guardianship process was much higher than my father or I could afford.*

*Inspired by my experience as a caregiver, I recently became an Ontario licensed Paralegal. Equipped with this knowledge, I want to share how Adult Guardianship can support your caregiving journey.*

Ideally, every adult should have a legal Will and Powers of Attorney properly prepared and in place, but unfortunately many adults do not. Sometimes, people who suffer from various forms of dementia are diagnosed "too late" and the individual is no longer mentally capable of creating Powers of Attorney. Sometimes our care recipients develop or are born with a developmental disability and therefore may not have the mental capacity to create Powers of Attorney. In either of these scenarios, caregivers, or Substitute Decision Makers (SDM) of the individual should be referred to information regarding how to obtain "Adult Guardianship" to ensure their care recipient's personal care and their property / finances are properly and securely managed.

**There are two types of Powers of Attorney:**

**1) Continuing Power of Attorney for Personal Care**

**2) Continuing Power of Attorney for Property**

You must be considered "mentally capable" to create these documents, and the definition of "mentally capable" is different for each document. When Powers of Attorney have not been, or cannot be created, Adult Guardianship may be the solution.

Adult Guardianship is when someone steps in, of their own volition, and is appointed by the Office of the Public Guardian and Trustee, or appointed by a judge in court, to make decisions for the adult person who is incapable.

**There are two main types of Adult Guardianships:**

**1) Guardian of Personal Care**

**2) Guardian of Property**

These guardianships essentially "mirror" the purpose of Powers of Attorney. To date, legal fees for seeking Guardianship of Personal Care, Guardianship of Property, or both which is called Guardianship of the Person, can cost caregivers up to approximately \$25,000.00.

**Fortunately, for a resident of Ontario, Canada, a default "Substitute Decision Maker" is AUTOMATICALLY appointed to them for medical decisions they are incapable of making, under the Health Care Consent Act.**

Having an "Automatic SDM" gives the caregiver the opportunity to decide if obtaining Guardianship of Personal Care (or Guardianship of the Person) is necessary since medical decisions can and are made without this legal documentation.

***To learn more about Substitute Decision Maker in Ontario, please visit:***

***<https://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/ISBN-0-7794-3016-6.pdf>***

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**But what happens to the incapable adult's property?**

"Property" in this context means not only real estate, but also managing the incapable adult's bills, belongings, bank accounts, taxes, etc. It contains many required, daily tasks the incapable adult cannot manage. **Without legal documentation such as a POA/or Guardianship of Property, caregivers are unable to act on behalf of the incapable adult, REGARDLESS of their relationship.** That means even spouses cannot step in to act on behalf of their husband/wife, and parents cannot step in to act on behalf of their incapable adult child once they are 18 years old.

**There are two ways to become someone's Guardian:**

- 1) Through a judge in court – for one or both guardianship types. (If seeking both guardianships, together it is called "Guardian of the Person")
- 2) Through the Office of the Public Guardian and Trustee (PGT) by application – only available for certain individuals, and only available for Guardian of Property.

**Things to keep in mind:**

- It is difficult to obtain Guardianship of Personal Care or Guardianship of the Person without the help of a lawyer who specializes in the area of healthcare. (ie: a health lawyer)
- You should thoughtfully consider whether obtaining this is necessary for the benefit of your incapable care recipient.
- Process for obtaining Guardianship of the Person through a lawyer can be:
  - Lengthy in time,
  - Involves extensive paperwork,
  - A significant out of pocket expense in legal fees /disbursements.

**For most caregivers and SDMs, Guardianship of Property is the one type of Guardianship that is needed and will ultimately save them much unnecessary hardship.**

NOTE: If the incapable adult will be admitted to Long Term Care, POA of Property or Guardian of Property is required to apply for the government of Ontario's Long-Term Care Home Rate Reduction Program.

Having been in your shoes, my goal is to help caregivers understand and obtain "Adult Guardianship of Property" at an affordable fee. Service is available and applicable to residents of Ontario, Canada only.

**For more information, please email [info@tbhlegal.ca](mailto:info@tbhlegal.ca), visit [www.tbhlegal.ca/adultguardianship](http://www.tbhlegal.ca/adultguardianship) or call Rachel Merucci, Licensed Paralegal at 519-777-9303.**

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*Rachel Merucci is an Ontario licensed Paralegal and sole proprietor of TBH legal. In addition to providing Adult Guardianship education on their website, TBH legal also provides free webinars entitled "ADULT GUARDIANSHIP EXPLAINED" geared towards caregivers, and "ADULT GUARDIANSHIP CARE-WORKER BASICS" geared towards care-workers. On behalf of TBH legal, Rachel Merucci has also presented to not-for-profit organizations, private support groups and residents of LTC and Retirement home residents across Ontario. To learn more about TBH legal and Rachel Merucci and/or connect with her on social media, check out [www.tbhlegal.ca](http://www.tbhlegal.ca) or*

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