

Applying to Determine Whether or Not a Substitute Decision-Maker has Considered the Factors for Substitute Decision-Making with Respect to the Collection, Use or Disclosure of Personal Information by a Service Provider

***Child, Youth and Family Services Act (“CYFSA”)* Form Y2**

If a child or young person is incapable of making decisions about the collection, use or disclosure of their personal information by a service provider, decisions will be made by a substitute decision-maker. Substitute decision-makers are required to consider the factors set out in subsection 302(1) of the *CYFSA* when making those decisions.

If a service provider believes that an substitute decision-maker is not considering the factors set out in the Act, they may apply to the Consent and Capacity Board for a determination as to whether the factors have been considered or for an order for the substitute decision-maker to comply with the Act. Use of this application is limited to the service provider (family members cannot apply to the Board).

Whenever an application of this type is received, the law provides that the individual is deemed to have applied for a review of his or her capacity to make the relevant decision. This does not apply if the Board has determined the issue of capacity within the previous six months.

How do I apply?

Fill out an application form (Form Y2) and send it to the Board. The application can be found on the CCB's website. It should be submitted by email or fax if possible, but can also be submitted by regular mail.

When and where will the hearing be?

The Board will send a notice with the time and place of the hearing. The Board will attempt to schedule the hearing at a location that is convenient to the parties. The hearing will usually be held within one week after the Board receives the application.

Who are the parties to the hearing?

The parties to the hearing are the service provider, the incapable individual, and the substitute decision-maker. If appropriate, the Board may name other parties.

Legal representation at the hearing

It may be a good idea to have a lawyer at the hearing but parties are not required to have one. The Lawyer Referral Service at the Law Society of Ontario may be contacted for assistance. Information on this service is available on the Law Society's website. Some people may be eligible for a Legal Aid lawyer free of charge.

What will happen at the hearing?

The Presiding Member will introduce everyone and explain how the hearing will work, who the official parties are and the order in which people will speak. Each party may attend the hearing and invite anyone they want to come. Each party may have a lawyer, call witnesses and bring documents. Ideally the documents will have been exchanged between the parties and provided to the Board in advance of the hearing.

For the Board to make a decision on a Y2 application there must be a valid determination of incapacity. If the Board has not reviewed the determination of incapacity in the past six months, it will do so at this hearing.

The service provider must present information at the hearing to help the Board decide whether or not the substitute decision-maker considered the required factors for substitute decision-making set out in subsection 302(1) of the *CYFSA* (links to the relevant legislation can be found on the CCB's website). Each party as well as the Board members may ask questions of each witness. At the end of the hearing each party will be invited to summarize and the Presiding Member will end the hearing.

What happens after the hearing?

The Board will meet in private to make its decision. It will issue the decision within one day. Written reasons for the decision will be issued within four business days if any of the parties request them within thirty days of the hearing. The Board may decide the substitute decision-maker did or did not consider the factors for substitute decision-making. If the Board decides the substitute decision-maker did not consider the factors, it may substitute its opinion, or it may give the substitute decision-maker directions based on the factors to consider for consent.

Can the Board's decision be appealed?

There is no provision for an appeal of the Board's decision in the *CYFSA*.

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