

Applying to Determine Whether or Not a Substitute Decision-Maker has Complied with the Rules for Substitute Decision-Making with Respect to the Collection, Use or Disclosure of Personal Health Information

***Personal Health Information and Protection Act (“PHIPA”)* Form P-2**

If a person is incapable of making decisions about the collection, use or disclosure of their personal health information, decisions will be made by a substitute decision-maker. Substitute decision-makers are required to follow the principles set out in *PHIPA* when making those decisions.

If a health information custodian believes that a substitute decision-maker is not following the principles set out in *PHIPA*, they may apply to the Consent and Capacity Board for a determination as to whether the principles have been followed or for an order for the substitute decision-maker to comply with the Act. Use of this application is limited to the health information custodian (family members cannot apply to the Board).

Whenever an application of this type is received, the law provides that the person 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 P-2) and send it to the Board. The application can be found on the Board'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 health information custodian, 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 P-2 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 health information custodian must present information at the hearing to help the Board decide whether or not the substitute decision-maker followed the principles for substitute decision-making. The Board will consider the criteria in section 24(1) of *PHIPA* (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 comply with the principles for substitute decision-making. If the Board decides the substitute decision-maker did not comply it may give him or her directions based on the principles.

Can the Board's decision be appealed?

A decision of the Board may be appealed by any party to the Ontario Superior Court of Justice.

CCB Contact Information

Email: ccb@ontario.ca

Phone: (416) 327-4142
 1-866-777-7391

TTY/TDD: (416) 326-7TTY or (416) 326-7889
 1-877-301-0TTY or 1-877-301-0889

Fax: (416) 327-4207
 1-866-777-7273