



Information available on Substitute Decisions Act

The *Substitute Decisions Act* (SDA), one of four related statutes that set out new procedures governing what may happen when someone is not capable of making decisions about their own property or personal care, has been the subject of some confusion among both lawyers and their clients in recent months.

Scheduled to be proclaimed in 1995, the SDA (S.O. 1992, Ch. 30) is packaged with the *Advocacy Act* (S.O. 1992, Ch. 26), the *Consent to Treatment Act* (S.O. 1992, Ch. 31) and an Act to amend other statutes to conform with the new laws (S.O. 1992, Ch. 32). These Acts overlap with each other in certain areas. Members are strongly urged to familiarize themselves with the new statutes, which are available from Publications

Ontario at tel. (416) 326-5300 or 1-800-668-9938.

While a number of groups and individuals have voiced concerns and opinions about the effect of the new laws, the Ministry of the Attorney General has attempted to counter what it describes as numerous myths and misconceptions about the legislation. According to the Ministry:

- A person named in a power of attorney is not required to provide security or file a management plan. Appointed guardians will be required to meet these requirements and the courts will continue to be able to reduce or waive the security requirement.
- After the SDA takes effect, all substitute decision makers – attorneys and guardians – will be subject

Mortgage broker registration

Many lawyers completing their Forms 4/5 have responded that the section of the form that requires them to indicate whether they are registered as mortgage brokers is “not applicable.” However, new reporting requirements and regulations for mortgage brokers may make it necessary for some practitioners to register.

According to material from the Ministry of Finance, mortgage brokerage business includes but is not limited to the following activities:

- lending money on the security of real estate
- arranging mortgage loans or mortgage financing
- arranging investments in mortgages or in parts of a mortgage (that is, syndicating mortgages)
- buying and selling mortgages
- assigning mortgages or part of a syndicated mortgage for a fee
- fulfilling commitments to provide mortgage financing
- dealing in mortgages
- operating a mortgage broker’s trust account
- administering mortgages on behalf of investors
- using advertisements, notices or signs to indicate that the person or company is a mortgage broker or is engaged in activities related to mortgage brokerage
- referring a prospective borrower to a lender for the payment of a finders fee.

The Ministry has published a paper titled “Accounting and Reporting Requirements for Mortgage Brokers under the *Mortgage Brokers Act*.” Copies of the document are available by contacting the Ministry at (416) 326-9045.

to its provisions, no matter when the power of attorney was executed, so it will not make any difference if it is signed before the Act is proclaimed.

- The Office of the Public Guardian and Trustee, which will be in place when the SDA is proclaimed, will act as statutory guardian for people who are assessed as incapable of managing property, but will only remain as statutory guardian as last resort when no attorney, family member or friend applies to replace it.
- An immediate family member may become a guardian through a process that does not require an application to the court.
- There is no requirement under the SDA that every incapable person be assessed or have a guardian or any other form of substitute decision-maker.
- The SDA will not come into effect until it is proclaimed.

Further information and a "Guide to the Substitute Decisions Act" published by the Ministry, are available by contacting the Substitute Decisions Project, Office of the Public Trustee, 145 Queen Street West, Sixth Floor, Toronto M5H 2N8, fax (416) 314-6190.

As part of its Operation Update in October 1993, the CBA(O) included a paper dealing with the Substitute Decisions Act by Hilary E. Laidlaw and Paul D. Milne. (The paper makes reference to other SDA-related articles which have appeared in the Estates and Trusts Quarterly.) The whole of the Operation Update materials may be purchased from the CBA(O). It has indicated that it might make the paper available for the cost of photocopying if there is sufficient demand.

Also, the Law Society's Continuing Legal Education department is planning a joint program with the CBA(O) on the SDA that is currently scheduled for October 1994.

Affidavits

Practitioners are reminded that alterations, no matter how minor, to a sworn affidavit are improper.

Properly sworn affidavits are an essential part of the administration of justice.

Solicitors involved in such activity not only compromise the client's position but are also in a position where they may be in violation of the *Commissioner for Taking Affidavits Act*. Last minute changes to an affidavit can be dealt with through word processing technology or through properly initialled handwritten amendments.

Duty of confidentiality

As a result of a number of complaints recently investigated by the Law Society, practitioners should take note of certain situations in which they must take care to guard confidential information about a client:

- disclosing the contents of a will to parties other than the testator before the testator's death.
- when seeking a court order to be removed as solicitor of record in a court case.
- when transferring carriage of a client's file to a solicitor in another firm without first obtaining the client's consent and direction.

CLE program video replays

Programs originally presented live in June by the Law Society's Continuing Legal Education department are being shown on video at Osgoode Hall on the July dates below; for registration information, call (416) 947-3374 or toll-free 1-800-668-7380:

Hot Topics In Human Rights

July 14, 9 a.m. to noon

Workplace harassment, the duty to accommodate, and drugs and alcohol in the workplace. Lynn Bevan and Jeffrey Sack, co-chairs; faculty includes Roy Filion, Barbara Humphrey, David Lepofsky, Ann Molloy.

Agents and Fiduciaries

July 19, 9 a.m. to 1 p.m.

The fiduciary obligation in agency and other relationships, duty of good faith, remedies, etc. The Hon. Mr. Justice James Spence; Prof. Gerald Fridman; Robert McComb; Margaret Ross; and chair Ronald Slaght.

Sexual Orientation and the Law

July 20, 9 a.m. to 12:30 p.m.

Where the law is, where it appears to be headed. The Charter and Ontario Human Rights Code, same-sex issues in family and estates law, employment, pensions, etc. Faculty includes David Corbett, Peter Jervis, Judith Keene, Harriet Sachs, Susan Ursel, and John Page and Sari Springer (chairs).

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