

YOU'VE BEEN APPOINTED AS ATTORNEY FOR PROPERTY OR CARE – NOW WHAT?

Justin W. de Vries & Anna Alizadeh¹

1. Introduction

It is now all too common that family disputes erupt over issues of capacity and managing parents' property and personal care. As society ages and people live longer, more disputes and litigation will inevitably and regrettably arise (and already do). Clients come to lawyers seeking advice. Common questions included: What are the duties and responsibilities of attorneys for property and care? Am I entitled to compensation and, if so, how much? Do I have to consult with my siblings about financial and health care decisions? What happens if the family cannot agree? Do I have to consult with the incapable persons about my decisions? Can I gift myself or my family money? Can I decide that a parent should move into a nursing home and who do I have to ask or tell? The questions are often as diverse (and complex) as the clients that walk through a lawyer's door.

This paper is a general introduction to powers of attorney. It will briefly discuss what: a) a power of attorney is; b) the requirements to execute a valid power of attorney; c) the laws that pertain to powers of attorney; d) an individual's capacity to manage his or her property and personal care; and finally e) provide a general, non-exhaustive checklist of the obligations an attorney faces and steps he or she should take.

This paper also sets out the general duties of an attorney for property or personal care, the attorney's liabilities and entitlement to compensation.

¹ Both of **de VRIES LITIGATION LLP**. Offices in Toronto and Oakville. Tel: **416-640-2757** or **905-844-0900**. Visit our website at **devrieslitigation.com** and follow our blog at **allaboutestates.com**.

2. What is a Power of Attorney?

A power of attorney is a legal document that gives someone else the right to act on behalf of the person who executes the document (the “**grantor**”), whether it is with respect to the grantor’s property or personal care decisions. Powers of attorney empower an attorney to step into the shoes of the grantor and handle a wide variety of issues on the grantor’s behalf. Powers of attorney can be revoked at any time, so long as the grantor has capacity to revoke the powers. Powers of attorney cease to be effective upon the grantor’s death.

Powers of attorney are not governed federally; each province has its own requirements. It is important to seek legal advice as to whether a power of attorney executed in Ontario will be recognized in other jurisdictions.

The Governing Law

In Ontario, powers of attorney are governed by the *Substitute Decisions Act, 1992*². The *Health Care Consent Act, 1996*³ also applies to certain decisions made by attorneys for personal care.

The SDA sets out what could happen when a person is no longer mentally capable of making decisions with respect to his or her property or personal care. The Office of the Public Guardian and Trustee administers the SDA⁴, but the courts are often involved in adjudicating disputes and interpreting the law. The SDA defines capacity to grant powers of attorney for property and personal care, as well as capacity to manage one’s own property and personal care. The tests for granting a power of attorney for property and care are distinct from the legal test for capacity to make a last will and testament.

² *Substitute Decisions Act, 1992*, SO 1992, c 30 (“**SDA**”).

³ *Health Care Consent Act, 1996*, SO 1996, c 2, Sched. A (“**HCCA**”).

⁴ The Ministry of the Attorney General, *A Guide to the Substitute Decisions Act, 2000*, online: The Ministry of the Attorney General
<<https://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/pgtsda.pdf>>, p 7.

The Attorney

The “attorney” referred to in “power of attorney” is the person the grantor chooses to act on his or her behalf; attorney in this context does not refer to a lawyer (although a lawyer can be appointed as an attorney for property or care). An attorney can be anyone who is at least 16 (in the case of an attorney for care) or 18 (in the case of an attorney for property) years old.⁵ A grantor may also name more than one person as his or her attorney. The attorney for property and personal care may or may not be the same individual.

An attorney’s primary goal is to maximize the quality of the grantor’s life. Attorneys for property and care have wide ranging powers and are required to act in good faith and in the best interests of the grantor.⁶ Attorneys are considered to be in a position of trust and are, therefore, regarded as fiduciaries. An attorney’s powers and duties must be exercised and performed diligently, with honesty and integrity and in good faith, for the incapable person’s benefit.⁷

An attorney may be liable for damages resulting from a breach of any of his or her duties.⁸ If two or more attorneys are appointed, the attorneys will be jointly and severally liable for each other’s actions. Each attorney is liable for his or her own part in the loss (several liability) and also for the loss caused by the co-attorney(s) (joint liability).

An attorney for property or personal care can apply to the court for directions if ever faced with questions about his or her management of the grantor/incapable person’s property or personal care. An attorney for personal care may also ask the Consent and Capacity Board for assistance in certain situations. It is advisable that the attorney for property or personal care consult with a lawyer before doing so.

⁵ The Office of the Public Guardian and Trustee, *Powers of Attorney and “Living Wills”, Questions and Answers*, 2014, online: The Ministry of the Attorney General <<https://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/livingwillqa.pdf>>, pp 10 and 16.

⁶ SDA, ss 31 and 66.

⁷ SDA, s 32(1).

⁸ SDA, 33(1).

3. The Power of Attorney

There are three types of power of attorney in Ontario:⁹

- I. **A continuing power of attorney for property:** this document concerns the grantor's financial affairs. It allows the attorney for property to act on the grantor's behalf even if the grantor becomes mentally incapable. This document will come into effect as soon as it is signed, unless the grantor specifies in the document that it will only come into effect at a later date (for example, when the grantor is determined to be incapable of managing his or her property);
- II. **A non-continuing power of attorney:** this also covers the grantor's financial affairs, but cannot be used if the grantor becomes incapable. This is often granted by individuals who will be away from home for periods of time and need someone to look after their financial affairs while they are gone; and
- III. **A power of attorney for personal care:** this document covers personal care decisions regarding shelter, hygiene, health care, clothing, safety, and nutrition.

To execute a valid power of attorney for property or care,

- the grantor must be at least 16 (in the case of power of attorney for personal care) or 18 (in the case of power of attorney for property) years old¹⁰;
- the grantor must sign and date the document;
- the power of attorney must be witnessed by two people¹¹; and

⁹ *Supra* note 5, p 2.

¹⁰ *Supra* note 5, pp 9 and 16.

¹¹ SDA, ss 10(1) and (2), and 48(1) and (2). The following persons shall not be witnesses: (i) the attorney or the attorney's spouse or partner; (ii) The grantor's spouse or partner; (iii) A child of the grantor or a person whom the grantor has demonstrated a settled intention to treat as his or her child; (iv) A person whose property is under guardianship or who has a guardian of the person; and (v) a person who is less than 18 years old.

- the grantor must have the requisite capacity to grant a power of attorney for property and/or care. There are two distinct tests to determine capacity to grant a power of attorney for property and care.

Capacity to Grant or Revoke a Power of Attorney for Property

A person is capable of giving a continuing power of attorney if he or she,¹²

- I. knows what kind of property he or she has and its approximate value;
- II. is aware of obligations owed to his or her dependants;
- III. knows that the attorney will be able to do on the person's behalf anything in respect of property that the person could do if capable, except make a will, subject to the conditions and restrictions set out in the power of attorney;
- IV. knows that the attorney must account for his or her dealings with the person's property;
- V. knows that he or she may, if capable, revoke the continuing power of attorney;
- VI. appreciates that unless the attorney manages the property prudently its value may decline; and
- VII. appreciates the possibility that the attorney could misuse the authority given to him or her.

A person is capable of revoking a continuing power of attorney if he or she is capable of giving one.¹³ The capacity required to manage one's own property is different than the capacity required to grant a power of attorney for property.¹⁴

¹² SDA, s 8(1).

¹³ SDA, s 8(2).

¹⁴ SDA, s 6: A person is incapable of managing property if the person is not able to understand information that is relevant to making a decision in the management of his or her property, or is not able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.

Capacity to Grant or Revoke a Power of Attorney for Personal Care

To be able to grant a power of attorney for personal care, the grantor must:¹⁵

- I. have the ability to understand whether the proposed attorney has a genuine concern for the person's welfare; and
- II. appreciate that the person may need to have the proposed attorney make decisions for the person.

Similar to power of attorney for property¹⁶, a power of attorney for personal care is valid if, at the time it was executed, the grantor was capable of giving it even if the grantor is incapable of personal care^{17, 18}.

A person is capable of revoking a power of attorney for personal care if he or she is capable of giving one.¹⁹

An attorney for property and personal care (if not the same individual) should maintain regular contact with one another when making decisions with respect to the grantor's personal care and property. This is because an attorney for property needs to ensure that there are sufficient assets to fund the grantor's care expenses. For example, if the attorney for personal care determines it is in the grantor's best interest (or it is the grantor's wish) to live in a certain care facility, the attorney for property must arrange payment for the chosen facility (provided the grantor has sufficient assets).

¹⁵ SDA, s 47(1).

¹⁶ SDA, s 9(1): a continuing power of attorney is valid if the grantor, at the time of executing it, is capable of giving it, even if he or she is incapable of managing property.

¹⁷ SDA, s 45: A person is incapable of personal care if the person is not able to understand information that is relevant to making a decision concerning his or her own health care, nutrition, shelter, clothing, hygiene or safety, or is not able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.

¹⁸ SDA, s 47(2).

¹⁹ SDA, s 47(3).

As detailed below, attorneys for property and personal care have different, though sometimes overlapping, obligations in carrying out their duties.

IV. Power of Attorney for Property – A Checklist

If you're appointed as an attorney for property, below is a non-exhaustive list of steps you should take and obligations you have:

- ✓ Determine the type of power of attorney for property the grantor has executed.
 - is the document a continuing or non-continuing power of attorney for property?
 - if the document does not expressly indicate the type of power of attorney, review the document to ascertain the grantor's intentions. If the grantor's intentions are that the attorney has power to manage the grantor's property while the grantor is incapable, then the document is a continuing power of attorney.²⁰

- ✓ Ascertain when the power of attorney comes into effect.
 - does it come into effect upon its execution or is it postponed until a specified event or contingency?²¹
 - If the continuing power of attorney comes into effect once the grantor is incapable, has a certificate of incapacity been issued under the *Mental Health Act*²²? If not, you should consult with a capacity assessor²³ to determine whether the grantor is, indeed, incapable of managing his or her property.²⁴

²⁰ SDA, s 7(1).

²¹ SDA, s 7(7).

²² *Mental Health Act*, RSO 1990, c M7.

²³ SDA defines "assessor" as a member of a class of persons who are designated by the regulations as being qualified to do assessments of capacity. Ontario Regulation 460/05 specifies who qualifies as a capacity assessor.

²⁴ SDA, s 9(3).

- ✓ Ascertain whether the grantor restricted your powers under the power of attorney.
 - Unless the power of attorney restricts your powers, you will be able to do almost anything that the grantor can do with respect to the grantor's finances (for example, sign documents, start or defend lawsuits, or sell property).
 - You cannot execute a last will and testament on the grantor's behalf²⁵ or take any other steps that are testamentary in nature.

- ✓ Discuss your powers, duties, and obligations with the grantor to the extent that the grantor is able to understand.²⁶ As well, as attorney, you should encourage the grantor to participate, to the best of his or her abilities, in your decisions regarding the grantor's property.²⁷
 - You should also consult with the grantor's family and friends who are in regular contact with the grantor, and with the people providing personal care to the grantor (for example, doctors, or support workers). You must foster personal contact between family members, caregivers, and the grantor.²⁸

- ✓ Determine the grantor's assets and liabilities. As attorney for property, you are entitled to receive information and documents, from any business or person, regarding the grantor's property.
 - To ascertain the grantor's assets and liabilities, it may be necessary for you to contact the grantor's professional advisors (including accountants, business associates, or lawyers), as well as the grantor's family and friends.

²⁵ SDA, s 7(2).

²⁶ SDA, s 32(2).

²⁷ SDA, s 32(3).

²⁸ SDA, s 32(4).

- You should also locate all of the grantor's important documents relating to the grantor's assets (such as title deeds, insurance policies, or stock certificates), as well as the grantor's last will and testament²⁹. This is because an attorney for property cannot dispose of any assets that are subject to a specific testamentary gift³⁰ (except for a testamentary gift of money³¹), with certain exceptions. One exception to this rule is that the attorney may dispose of such property if it is necessary for the attorney to comply with his or her duties.³²

- ✓ Once you have gathered a list of the grantor's assets and liabilities,
 - you should then contact and notify, for example, the following that the grantor is no longer capable of managing his or her property, and that you have been appointed as attorney for property:
 - all financial institutions with whom the grantor has accounts or dealings (for example, banks, trust companies, or brokers);
 - professional service providers (i.e. accountants, lawyers, financial advisors); and
 - insurance companies regarding the grantor's home, vehicle, or life insurance.
 - It is also helpful to redirect the grantor's mail to your address (particularly for bank and investment account statements, and bills).

- ✓ Identify any obligations the grantor may have, including any obligations to dependants (for example, to spouses, children, or elderly parents).

²⁹ SDA, s 33.1.

³⁰ SDA, s 35.1(1).

³¹ SDA, s 35.1(2).

³² SDA, s 35.1(3). The second exception is that an attorney may make a gift of property to the person who would be entitled to it under the grantor's last will and testament if the gift is authorized by s 37 of the SDA.

- Does the grantor have any obligations pursuant to a separation agreement or support order for spousal and/or child supports?
 - Does the grantor have any other contractual obligations such as any leases?
 - What, if any, business or contractual obligations does the grantor have?
- ✓ After ascertaining the above, you should develop a management plan. A management plan is not mandatory for an attorney for property whose powers stem from the power of attorney (as opposed to a court appointed guardian of property who must file a management plan with the court as a condition of his or her appointment). However, it is a good idea to prepare a management plan, as it will help you formulate a plan for managing the grantor's property and expenses going forward, as well as for satisfying the grantor's liabilities. It also provides advance notice of future plans to those who are close to the grantor and what to expect (thereby managing expectations). A management plan does not have to be overly detailed (but should be relatively comprehensive). It should be amended from time to time especially if there are major financial changes.
- ✓ You must make the following expenditures from the grantor's property, provided there is enough money, in the following order^{33,34}:
- i. Expenses that are reasonably necessary for the grantor's support, education, and care.
 - ii. If enough money remains, expenses that are reasonably necessary for the support, care, and education of the grantor's dependants.

³³ SDA, 37(2).

³⁴ SDA, s 37(1).

- iii. If enough money remains, expenses that are reasonably necessary to meet the incapable person's other legal obligations.
 - o If there is enough money to first satisfy payments of the above expenses, you may (cautiously) make charitable gifts, as well as gifts or loans to the grantor's relatives and friends.³⁵ However, you cannot make gifts or loans that would be contrary to the grantor's expressed wishes and certainly not make gifts or loans that would put the grantor in financial jeopardy.

- ✓ Attorneys for property must keep and maintain an accounting of all transactions relating to the grantor's property.³⁶ You must keep the grantor's financial accounts and transactions separate from your own. Legible and itemized receipts are required for all expenses (a dedicated credit card is a good idea to keep track of all expenses). You should not borrow or use the incapable person's money for yourself or for family and friends unless authorized (for example, by a court order).
 - o Attorneys for property are fiduciaries and held to a higher standard.
 - o Self-dealing must be avoided.
 - o Keeping accounts is necessary because an attorney may be required to formally submit accounts of his or her management of the grantor's property to the court for approval. It is not uncommon that family members or persons that have a statutory right to object under the SDA often file objections to the attorney's accounts. This process is referred to as a "passing of accounts" and the procedure is governed by the *Rules of Civil Procedure*.³⁷

³⁵ SDA, 37(3). Charitable gifts and gifts or loans to the grantor's family and relatives are guided by the principles in s 37(4) of the SDA.

³⁶ SDA, s 32(6).

³⁷ An attorney can voluntarily pass his or her accounts, or can be compelled to do so by, for example, the incapable person's attorney for personal care, a dependant of the incapable person with leave of the court, or the Ontario Public Guardian and Trustee.

- The accounts of an attorney under a continuing power of attorney must include:³⁸
 - i. a list of all the grantor's assets as of the date of the first transaction by the attorney on the grantor's behalf, including real property, money, securities, investments, motor vehicles and other personal property;
 - ii. an ongoing list of assets acquired and disposed of on the grantor's behalf, including the date of and reason for the acquisition or disposition and from or to whom the asset is acquired or disposed;
 - iii. an ongoing list of all money received on the grantor's behalf, including the amount, date, from whom it was received, the reason for the payment and the particulars of the account into which it was deposited;
 - iv. an ongoing list of all money paid out on the grantor's behalf, including the amount, date, purpose of the payment and to whom it was paid;
 - v. an ongoing list of all investments made on the grantor's behalf, including the amount, date, interest rate and type of investment purchased or redeemed;
 - vi. a list of all the grantor's liabilities as of the date of the first transaction by the attorney on the grantor's behalf³⁹;
 - vii. an ongoing list of liabilities incurred and discharged on the grantor's behalf, including the date, nature of and reason for the liability being incurred or discharged;
 - viii. an ongoing list of all compensation taken by the attorney, if any, including the amount, date and method of calculation;
 - ix. a list of the assets, and value of each, used to calculate the attorney's care and management fee.

³⁸ Ontario Regulation 100/96 under the SDA, s 2(1).

³⁹ It is also a good idea to keep copies of invoices and bills you have paid on the person's behalf, and cancelled cheques.

- You must retain the accounts and records until you no longer have guardianship over the property and one of the following occurs:⁴⁰
 - i. You obtain a release of liability from a person who has the authority to give the release;
 - ii. Another person has acquired the authority to manage the grantor's property or make decisions concerning his or her personal care, as the case may be, and you deliver the accounts or records to that person;
 - iii. The grantor has died and you deliver the accounts or records to the grantor's personal representative;
 - iv. You are discharged by the court on a passing of accounts⁴¹ and either the time for appealing the decision relating to the discharge has expired with no appeal being taken or an appeal from the decision relating to the discharge is finally disposed of and you are discharged on the appeal; or
 - v. A court order is obtained directing you to destroy or otherwise dispose of the accounts or records.
- ✓ You must keep the grantor's financial information confidential unless the information needs to be disclosed to carry out your duties or to abide by the law.⁴²
- ✓ An attorney for property is entitled to compensation from the grantor's assets at a rate specified by law. However, you should first consult the power of attorney for property as the grantor may specify an amount different than that prescribed by law.
 - If the grantor does not specify your compensation in the power of attorney, compensation is generally calculated as follows:⁴³
 - 3% of money received;

⁴⁰ Ontario Regulation 100/96 under the SDA, s 6.

⁴¹ Under section 42 of the SDA.

⁴² Ontario Regulation 100/96 under the SDA, ss 4 and 5.

⁴³ Ontario Regulation 26/95 under the SDA, s 1.

- 3% of money paid out on the grantor's behalf; and
 - 3/5 of 1% of the average annual value of the grantor's assets.
- ✓ Finally, as attorney under a continuing power of attorney, you may resign but, if you have acted under the power of attorney, your resignation is not effective until you deliver a copy of the resignation to:⁴⁴
- the grantor;
 - any other attorneys under the power of attorney;
 - the person named by the power of attorney as a substitute for the attorney who is resigning, if the power of attorney provides for the substitution of another person; and
 - unless the power of attorney provides otherwise, the grantor's spouse or partner and the relatives of the grantor who are known to the attorney and reside in Ontario, if,
 - you are of the opinion that the grantor is incapable of managing property, and
 - the power of attorney does not provide for the substitution of another person or the substitute is not able and willing to act.

V. Power of Attorney for Personal Care – A Checklist

Personal care decisions are decisions about health care, medical treatment, diet, housing, hygiene, and safety. An attorney will be able to make almost any decision of a personal nature that the grantor would normally make for him or herself.

An attorney for personal care must follow the known wishes of the grantor or make decisions in the best interest of the incapable person.⁴⁵ In doing so, the attorney must choose the least

⁴⁴ SDA, s 11(1)..

restrictive and intrusive course of action that is available and is appropriate in the circumstances.⁴⁶

If you're appointed as an attorney for personal care, below is a non-exhaustive list of steps you should take or obligations you have:

- ✓ Obtain a copy of the power of attorney for personal care and determine whether the power of attorney for personal care is in effect. A power of attorney for personal care only comes into effect once the grantor is incapable of making his or her personal care decisions.
 - You should review the power of attorney for personal care to determine whether the grantor specified the method for confirming the grantor's capacity. If the power of attorney is silent on this issue, you should consult a capacity assessor.

- ✓ Determine any specific instructions or restrictions stated in the power of attorney for personal care. For example, the grantor could restrict your power to only decisions regarding shelter, and not to health care, hygiene, safety, clothing or nutrition. End of life decisions (though not assisted death) are often addressed in a power of attorney for personal care.

- ✓ You should also know or determine the grantor's expressed wishes (while he or she was capable) with respect to ongoing personal care decisions, and his or her values and beliefs regarding life and health. You must follow the grantor's wishes.
 - A grantor may specify his or her wishes as to personal care in a "living will" or "advance directive" (though such documents and nomenclature are more

⁴⁵ SDA, s 66 (3).

⁴⁶ SDA, s 66(9).

common in the US than Canada). As well, you should consult with the grantor's relatives and friends to shed light on what kind of care a grantor wants or doesn't want.

- ✓ Explain to the grantor your powers and duties, and encourage the grantor's participation in decision making.⁴⁷ You should also seek to foster the grantor's independence as much as possible.⁴⁸

- ✓ Keep an open line of communication with the grantor and the grantor's family and friends. As well, an attorney should encourage and facilitate communication/relationship between a grantor and the grantor's family and friends.⁴⁹

- ✓ After ascertaining the above, you should develop a guardianship plan. A guardianship plan is not mandatory for an attorney for personal care whose powers stem from the power of attorney (as opposed to a court appointed guardian of personal care where a guardianship plan must be filed with the court).
 - However, it is a good idea to prepare a guardianship plan, as it will help you formulate a plan regarding the grantor's personal care moving forward, avoid conflicts with family members, and provide a well thought out roadmap for future decisions.

- ✓ When determining what personal care decisions are in the incapable person's best interest, you must take the following into consideration,⁵⁰

⁴⁷ SDA, s 66(5).

⁴⁸ SDA, s 66(8).

⁴⁹ SDA, ss 66(6) and (7).

⁵⁰ SDA, s 66(4).

- the values and beliefs that you know the grantor held when capable and believe the grantor would still act on if capable;
 - the grantor's current wishes, if they can be ascertained; and
 - the following factors:
 - Whether your decision is likely to,
 - improve the quality of the grantor's life,
 - prevent the quality of the grantor's life from deteriorating, or
 - reduce the extent to which, or the rate at which, the quality of the grantor's life is likely to deteriorate.
 - Whether the benefit the grantor is expected to obtain from the decision outweighs the risk of harm to the grantor from an alternative decision.
- ✓ Below is a list of records that you are required to maintain as attorney for personal care:⁵¹
- i. a list of all decisions regarding health care, safety and shelter made on behalf of the grantor, including the nature of each decision, the reason for it and the date;
 - ii. a copy of medical reports or other documents, if any, relating to each decision;
 - iii. the names of any persons consulted, including the grantor, in respect of each decision and the date;

⁵¹ Ontario Regulation 100/96 under the SDA, s 3(1). Similar to attorneys for property, an attorney for personal care must retain his or accounts in accordance with s 6 of the Ontario Regulation 100/96 under the SDA.

- iv. a description of the grantor's wishes, if any, relevant to each decision, that he or she expressed when capable and the manner in which they were expressed;
 - v. a description of the grantor's current wishes, if ascertainable and if they are relevant to the decision;
 - vi. for each decision taken, the grantor's opinion on each of the factors listed in clause 66 (4)(c) of the SDA⁵².
- ✓ You must keep the grantor's financial information confidential unless the information needs to be disclosed to carry out your duties or to abide by the law.⁵³
- ✓ The SDA does not specify that an attorney for care can take compensation. However, an attorney for personal care may take compensation if a court determines that the claim is reasonable.⁵⁴
- ✓ Finally, as attorney under a power of attorney for personal care, you may resign but, if you have acted under the power of attorney, your resignation is not effective until the you deliver a copy of the resignation to:⁵⁵

⁵² SDA, s 66(4)(c) lists the following factors:

1. Whether the guardian's decision is likely to,
 - i. improve the quality of the person's life,
 - ii. prevent the quality of the person's life from deteriorating, or
 - iii. reduce the extent to which, or the rate at which, the quality of the person's life is likely to deteriorate.
2. Whether the benefit the person is expected to obtain from the decision outweighs the risk of harm to the person from an alternative decision.

⁵³ Ontario Regulation 100/96 under the SDA, ss 4 and 5.

⁵⁴ *Trustee Act*, RSO 1990, Chapter T 23, s 61(1): A trustee, guardian or personal representative is entitled to such fair and reasonable allowance for the care, pains and trouble, and the time expended in and about the estate, as may be allowed by a judge of the Superior Court of Justice.

⁵⁵ SDA, s 52(1).

- the grantor;
- any other attorneys under the power of attorney;
- the person named by the power of attorney as a substitute for the attorney who is resigning, if the power of attorney provides for the substitution of another person;
and
- unless the power of attorney provides otherwise, the grantor's spouse or partner and the relatives of the grantor who are known to you and reside in Ontario, if the power of attorney does not provide for the substitution of another person or the substitute is not able and willing to act.

Conclusion

Acting as an attorney for property or attorney for care can often be a thankless task. Family members are quick to criticize and find fault. Moreover, you must not lose sight of the fact that you are a fiduciary and held to a higher standard. You must be prepared to account for your actions and be ready to head to court for directions (it is not always smooth sailing).

Making decisions as an attorney can be fraught with anguish and uncertainty so be prepared. The above checklists are a non-exhaustive list of some of the obligations an attorney for property or care have. Attorneys should consult with a lawyer to ensure that they have and continue to satisfy their duties as attorneys for property or personal care. Good luck!