

*“RIPPLE EFFECT”*  
*How families and survivors cope with Relationships*  
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# HOW TO PROTECT THE NEEDS OF YOUR BRAIN INJURED CLIENT

Presented by:

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# Protecting the Needs of your Brain Injured Client

- Who needs protection?
- How are a brain injured client's needs be protected?
- What steps must be taken to ensure a brain injured client's needs are protected?

# Who needs protection?

- “A party under disability”
  - ❖ A minor
  - ❖ A person who has been deemed mentally incapable within the meaning of sections 6 or 45 of the *Substitute Decisions Act*

*Rule 7.01 of the Rules of Civil Procedure*

# Who needs protection?

- Mentally Incapable means
  - ❖ *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 thereof*

*Substitute Decisions Act, S.O. 1992, c.30, section 6*

# Who needs protection?

- ❖ ***Incapable of understanding 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 a decision.***

*Substitute Decisions Act, S.O. 1992, c.30, section 45*

## How are brain injured client's needs protected?

- Court
- Office of the Children's Lawyer
- Office of the Public Guardian and Trustee

## How are brain injured client's needs protected?

- How does the Court protect the brain injured client?:
  - ❖ The Court has inherent the right of the state to usurp the rights of a natural parent or legal guardian and to act as the parent of any child or individual who is in need of protection.
  - ❖ Ensures the legal rights of the disabled person is not compromised or given up without proper compensation.

## How are brain injured client's needs protected?

- *No settlement of a claim made by or against a person under disability, whether or not the proceeding has been commenced in respect of the claim is binding upon the person without the approval of a judge.*

*Rule 7.08 of the Rules of Civil Procedure*



# How are brain injured client's needs protected?

- The Office of the Children's Lawyer
  - ❖ Oversees the administration of justice on behalf of children with respect to their personal and property rights.
  - ❖ Represents a child in an action if there is no one willing to act as a litigation guardian.
  - ❖ Approves settlements.
  - ❖ Right to intervene ends at 18 years of age. Once the child turns 18 the property is automatically transferred to him/her.

# How are brain injured client's needs protected?

- The Office of the Public Guardian & Trustee
  - ❖ Manages the financial affairs of incapable people who have no one else who is authorized to do so.
  - ❖ Make decisions of a personal nature for an incapable person in order to protect him or her from extreme physical risk.
  - ❖ Right to intervene begins at 18 years of age.

# What steps must be taken to ensure a brain injured client's needs are protected?

- Application or Motion brought before the Court to have the settlement approved.
- The disabled person must undergo a capacity assessment.
- Application for the Appointment of a Guardian of Property and/or Personal Care

# What steps must be taken to ensure a brain injured client's needs are protected?

- How you can help:
  - ❖ Revisit your recommendations in the Life Care Plan and work with the Life Care Planner & the family to develop a supplementary Plan that sets out the level of medical, rehabilitation and attendant care services the brain injured client will need going forward that fits within their monthly budget.
  - ❖ Provide an opinion to the Court as to what services are being reduced or removed from the Life Care Plan and why.

# What steps must be taken to ensure a brain injured client's needs are protected??

- Who can perform a capacity assessment?
  - ❖ Designated Capacity Assessor:
    - ❖ Successfully completed the qualifying course and
    - ❖ Be a member of one of the following Colleges:
      - ❖ College of Physicians and Surgeons of Ontario
      - ❖ College of Psychologists of Ontario

# What steps must be taken to ensure a brain injured client's needs are protected?

- ❖ College of Nurses of Ontario (as a Registered Nurse or Registered Nurse (EC),
- ❖ Ontario College of Social Workers and Social Service Workers (as a Registered Social Worker)
- ❖ College of Occupational Therapists of Ontario

# What steps must be taken to ensure a brain injured client's needs are protected?

- What is the test for incapacity?
  - ❖ *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 thereof.***
- More than evidence of the person having made poorly informed decisions or decisions that are foolish or risky but rather evidence that the choices made are the products of an impaired decision making process.

# What steps must be taken to ensure a brain injured client's needs are protected?

- Family must choose a Guardian:
  - ❖ Family member(s).
  - ❖ Trust Company.
- Prepare a Management Plan:
  - ❖ Annual budget setting forth how the brain injured person's money will be managed.
- Apply to the Court and OCL or PGT:
  - ❖ To be appointed as Guardian of Property.
  - ❖ Have the management plan approved.



# What steps must be taken to ensure a brain injured client's needs are protected?

- How can you help?
  - ❖ Work with the family and the proposed Guardian to:
    - ❖ Develop a flexible rehabilitation plan that maximizes the brain injured person's quality of life and fits within his/her monthly budget.
    - ❖ Provide written support for the rehabilitation plan including an explanation as to how these services will benefit the person along with a summary of recommended services that are not being provided along with justification for same.

**THANK -YOU**

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