



The SRNA acknowledges Roger Lepage, B.A., LL.B. for writing this article.

The Adult Guardianship and Co-decision-making Act: How It Can Impact Registered Nurses

The Adult Guardianship and Co-decision-making Act allows a person to apply to the court for an order appointing a decision-maker for a person who is no longer capable of making personal care decisions or property decisions for him or herself.

The court can, by order, appoint a decision-maker for an adult in three situations. Firstly, the court can appoint a co-decision-maker when an adult requires assistance in personal decision making such as where to live, taking care of a residence, doing food shopping, etc. Secondly, the court can appoint a decision-maker known as a personal guardian, when the adult is unable to make reasonable decisions for his or her personal care. Thirdly, the court can make an immediate appointment of a temporary personal guardian to protect the adult from serious physical or mental harm without first completing a full assessment. The same three circumstances apply to appoint a property co-decision-maker, a property guardian or a temporary property guardian, when an adult needs assistance or is unable to make decisions regarding his or her property.

Impact on an RN as a Professional

Q. How can this impact an RN in her professional capacity?

A. When an application is filed in court to appoint a decision-maker for an adult, the court will require evidence as to the adult's level of capacity to make personal or property decisions. In both situations the Act requires that at least two assessments be filed with the court regarding the adult's capacity. The regulation to the Act provides Form J to be completed for the assessment. The regulation provides that at least two of the

assessments must be performed by one or more, of a physician, a registered psychologist, a registered psychiatric nurse, a registered nurse, an occupational therapist, a social worker or a speech language pathologist. (Regulation 5)

Q. Who could ask a RN to complete the Form J assessment on an adult to determine his or her capacity?

A. The request may be made by the nurse's employer, a family member, a physician, a lawyer or an adult who proposes to be named as the adult's guardian.

Q. What are the legal ramifications that an RN has to consider when being asked to conduct the Form J assessment of an adult's capacity?

A. The RN must realize that the Form J assessment is a legal document that he or she signs under oath in the presence of a commissioner for oaths, lawyer or notary public. The affidavit then becomes evidence for the court to consider in determining whether to make an order appointing a decision-maker for the adult. The RN should also be aware that by completing the Form J assessment she or he may be called upon by the judge to attend a hearing and to be asked questions about the assessment. (sections 9 and 33 of the Act) The RN must complete the Form J assessment in an objective and professional manner. She or he must act in good faith. The Form J assessment must cover all points required by the Act, the regulation and the form. The RN must express an opinion as required in the form, taking into account the principle stated at section 3 of the Act as follows:

a) the adult is entitled to have his or her best interests given paramount consideration;

b) the adult is entitled to be presumed to have capacity, unless the contrary is demonstrated;

c) the adult is entitled to choose the manner in which he or she lives and to accept or refuse support, assistance or protection, as long as they do not harm themselves or others and have the capacity to make decisions about those matters;

- d) the adult is entitled to receive the most effective, but the least restrictive and intrusive, form of support, assistance or protection, when they are unable to care for themselves or their property;
- e) the adult who has difficulty communicating because of physical or mental disabilities is entitled to communicate by any means that enables him or her to be understood;
- f) the adult is entitled to be informed about and, to the best of their ability, participate in, decisions affecting him or her.

Q. What does an RN need to consider from a legal perspective if called upon to do a Form J assessment of an adult's capacity?

A. The nurse must recognize that the Act allows such an assessment to be made by an RN. As such, the legislature recognizes that an RN is competent to carry out such an assessment. The RN must do the assessment in an objective and complete manner and always act in good faith, giving paramount consideration to the best interests of the client. If these guidelines are followed, the legislation protects the RN from any liability for having conducted the assessment. (Section 70 of the Act)

Q. When is it appropriate for an RN to carry out a Form J assessment of an adult's capacity?

A. It would be appropriate for an RN to do the assessment after she or he has obtained a copy of Form J and has been provided with the necessary information to complete the entire form. The RN must use a proper assessment tool or method to assess the adult's capacity. The RN must make a sufficient number of visits in order to interview the adult. The RN must also interview other caregivers and have access to other professional reports such as the medical file. The nurse must also have access to significant others, friends and family members to obtain relevant information about the adult's capacity.

Q. When should an RN refuse to carry out a Form J assessment of an adult's capacity?

A. An RN should refuse to sign an assessment if she is not given sufficient access to the adult to conduct personal interviews and to the adult's

previous caregivers, family members and friends. The RN cannot simply sign the assessment based on hearsay. She has to make personal observations and carry out her own tests before giving an opinion.

Impact on an RN in a Personal Capacity

Q. Is there another situation where this Act can impact an RN personally rather than professionally?

A. Yes. An RN can apply or be asked to apply to become the adult's decision-maker. An RN can be related to an adult or have cared for an adult who, in her opinion, is no longer capable of making proper personal decisions or proper property decisions. In that situation the RN can apply to the court to be appointed as the adult's decision-maker. In that case at least two other professionals should file a Form J assessment. The RN should not file her own personal assessment.

Q. Would it be a conflict of interest for an RN to apply to be an adult's decision-maker when at the same time she had provided nursing care to that adult?

A. The Act states that a person should not be appointed an adult's decision-maker if that person also provided personal care or health care services to the adult for remuneration or if that person will be in a position where the person's interest may conflict with the adult's interests. However, the Act also provides that notwithstanding those circumstances the court may still appoint the RN, if that RN is the most appropriate person to appoint. (sections 21 and 46 of the Act)

Q. Who will the court normally appoint as an adult's decision-maker?

A. A person who has a long standing caring relationship with the adult. (section 14 of the Act) This could be an RN as indicated above.

Q. What are the duties of an RN appointed personal guardian or property guardian for an adult?

A. Duties of an RN would be the same as the duties imposed on any other person appointed as a property or personal guardian. The RN would have to exercise his or her duties assigned by the court diligently, in good faith and in the best interests of the adult. (sections 25 and 50 of the Act)

Q. Does an order appointing a person a property guardian prevail over a power of attorney signed by that adult?

A. Yes. See section 52.

Q. Does an order appointing someone as a personal guardian prevail over an advance health care directive signed by the adult?

A. No. A properly signed advance health care directive prevails over an order appointing someone personal guardian. (section 15(h) of the Act)

References

Province of Saskatchewan. (2001). *The adult guardianship and co-decision-making act*. Retrieved November 20, 2007 from <http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/A5-3.pdf>

Province of Saskatchewan. (2001). *The adult guardianship and co-decision-making regulations*. Retrieved November 20, 2007 from <http://www.qp.gov.sk.ca/documents/Forms/A5-3R1-J.pdf>