



**HULL & HULL LLP**  
Barristers and Solicitors

### **Who is Entitled to a POA/Guardianship Accounting?**

When advising clients who are acting as attorneys or guardians of property, it can be difficult to determine which other individuals may be entitled to either compel a passing of accounts or to review such accounts and raise objections as part of the passing of accounts process. Similarly, when acting for other family members considering bringing an application to compel a passing of accounts, there is some uncertainty regarding which individuals are entitled to (compel) an accounting.

Subsection 42(4) of the Substitute Decisions Act, 1992 sets out the individuals who can move to compel a passing of accounts by an attorney or guardian of property, in addition to the attorney or guardian of property or the grantor him/herself:

1. The grantor's or incapable person's guardian of the person or attorney for personal care;
2. A dependant of the grantor or incapable person;
3. The Public Guardian and Trustee;
4. The Children's Lawyer;
5. A judgment creditor of the grantor or incapable person; and
6. Any other person, with leave of the court.

Several court decisions have considered the circumstances in which leave ought to be granted under subsection 42(4)(6) of the Substitute Decisions Act. In *Lewis v Lewis*, 2020 ONCA 56, this issue was revisited. The Court of Appeal emphasized that the granting of leave to compel a passing of accounts is within the court's discretion, and leave will not automatically be granted, even where the test for granting leave to appeal has been satisfied. Typically, to obtain an order compelling a passing of accounts, (1) the person seeking leave must have a genuine interest in the grantor's welfare, and (2) it must be reasonable to believe that a court hearing the matter may order the respondent to pass accounts. In considering whether or not to exercise its discretion to compel a passing of accounts, the court may consider the extent of the attorney or guardian's involvement in the grantor's finances, as well as if the person seeking leave has raised a significant concern regarding the management of the grantor's property.

While an adult child expected to one day be a beneficiary under a Last Will and Testament may have a contingent interest in his or her parent's estate, he or she will not automatically be granted leave to compel a passing of accounts and/or participate in such a proceeding, as this determination remains in the court's discretion. The Court of Appeal has recently suggested that parties who have been described as vexatious litigants may be denied participation in a passing of accounts on that basis, notwithstanding that the other elements of the test for granting leave are satisfied.

It is important that lawyers assisting beneficiaries and fiduciaries alike are able to advise clients regarding accounting obligations and the entitlement to compel an accounting and/or participate in a passing of accounts, so that clients are able to take the necessary steps to preserve their rights and those of individuals requiring assistance in the management of their property.