



HULL & HULL LLP
Barristers and Solicitors

The Importance of Revisiting Committee Appointments

Recent news has been flooded with headlines regarding Britney Spears and conservators of property, raising the issue of differences in terminology between different jurisdictions and over time. In Ontario, for example, what are now known as guardians of property under the *Substitute Decisions Act, 1992* (the “SDA”), and analogous to conservatorships in the United States, were previously referred to as committees of the person’s estate. The authority of a committee was largely consistent with that of a guardian of property.

From time to time, we still encounter situations where a client was initially appointed to assist as committee for the estate of an incapacitated person pursuant to the *Mental Incompetency Act*, which was repealed under the *Consent and Capacity Statute Law Amendment Act, 1992*. They may come to us for a number of reasons, but it is important to establish at the outset that, in most cases, committees are no longer authorized to administer property on behalf of the incapable. Unless the committee appointment was registered with the Public Guardian and Trustee by April 3, 1997, or subsequently reinstated by the Court, committee orders expired two years after the SDA came into effect. Accordingly, most committee appointments have been ineffective since 1997.

Where a former committee of an incapable person’s estate seeks to continue assisting in the management of the incapable’s property, a fresh application for their appointment as guardian of property may be made. Due to the passage of time and time-specific nature of mental capacity, it is generally advisable that the incapable’s capacity be reassessed so that a current report can be included in the application materials, rather than simply relying on the Court’s prior declaration of incapacity. Even if the authority of the former committee to manage the incapable’s property is still recognized by financial institutions and other third parties, it may nevertheless be advisable to formalize the ongoing arrangement to prevent issues down the road.

If the appointment of a different individual as guardian of property is being contemplated, the issue of a passing of accounts should also be considered. We are generally reluctant to recommend that a client take on the role of guardian of property in the absence of an accounting, especially when the period and end date during which the incapable’s assets were under administration by another individual may be unclear.

Keeping these considerations in mind when assisting clients in circumstances where an incapable person was previously assisted by a committee of the estate can assist in a smooth transition in the management of their property, or the confirmation of such authority, while limiting the risk of disruption in the management of their property in their best interests.