

TABLE OF CONTENTS

Preface.....	v
Table of Contents.....	vii
Table of Cases	xi
I INTRODUCTION TO GENERAL CONCEPTS	1
1. PROPERTY GUARDIANSHIP	1
(a) Age-Related Decline	2
(b) Loss of Capacity from Injury/Illness.....	3
2. PERSONAL CARE	3
3. MINORS	4
4. COURT'S INHERENT <i>PARENS PATRIAЕ</i> JURISDICTION.....	5
II PROPERTY GUARDIANSHIPS	9
1. STATUTORY GUARDIANS VS. COURT-APPOINTED GUARDIANS.....	10
2. STATUTORY GUARDIAN OF PROPERTY.....	10
(a) Automatic Appointment – Section 15 SDA	10
(b) Request for Statutory Guardianship.....	12
(c) Ending the Statutory Guardianship	13
(d) Options for the Person Found Incapable.....	14
(e) Replacing the Public Guardian and Trustee.....	16
(f) Temporary Appointment of the Public Guardian and Trustee – Section 27 SDA.....	17
3. COURT-APPOINTED PROPERTY GUARDIANS.....	18
(a) Determining Capacity	22
(i) Presumptions of Capacity	22
(ii) Section 3 Lawyers.....	23
(iii) Test for Incapacity to Manage Property.....	25
(iv) Is There an Attorney for Property?	26
(v) Are Powers of Attorney Continuing?	27
(vi) Capacity to Grant or Revoke Powers of Attorney?.....	27
(vii) Were the Powers of Attorney Properly Executed?.....	28
(viii) Evidence of Incapacity	29
(ix) Medical Evidence and Capacity Assessments	30
(x) Order to Attend a Capacity Assessment.....	31
(xi) Capacity Assessment Requirements	33
(xii) Courts' Treatment of Capacity Assessments.....	34
(b) Eligible and Suitable Guardians.....	37
(c) Powers and Duties of a Property Guardian	40
(i) General Powers	40
(ii) Compensation.....	41
(iii) General Duties	42

(iv) Specific Duties	43
(v) Finding a Will.....	45
(vi) Obtaining Documents	46
(vii) Corporate Duties.....	46
(viii) Contracts	46
(ix) Expenditures.....	47
(x) Gifts or Loans	47
(xi) Record-Keeping and Accounting	48
(d) Procedural and Notice of Other Requirements.....	56
(i) General Application.....	56
(ii) Summary Application	58
(iii) Application to Terminate Statutory Guardianship	59
(iv) Motion to Terminate Guardianship of Property	59
(e) Directions on Any Question.....	60
III PERSONAL CARE GUARDIANSHIP	63
1. MANNERS OF APPOINTMENT	63
(a) Appointment through Application	63
(b) Temporary Appointment of the Public Guardian and Trustee	64
(c) Terminating and Varying Guardianships and Substituting Guardians....	64
2. CAPACITY AND PRE-EXISTING ATTORNEYS.....	66
(a) Standard Applied	66
(b) Is There an Attorney for Personal Care?.....	67
(i) Capacity to Grant Powers of Attorney for Personal Care	67
(ii) Execution Requirements	67
(iii) Duty to Arrange Capacity Assessment.....	68
(iv) Resignation of Personal Care Attorney	68
(v) Termination of Powers of Attorney for Personal Care.....	68
(vi) Evidence of Incapacity	69
(c) Eligible and Suitable Guardians.....	69
(d) Powers and Duties of a Personal Care Guardian.....	72
(i) Full Guardianship Powers	72
(ii) Partial Guardianship Powers	74
A. Section 66 SDA duties.....	74
B. Record-keeping duties	75
C. Prescribed behaviours and treatments	76
D. Must comply with guardianship plan.....	77
E. Good faith protection	77
(e) Procedural and Notice of Other Requirements.....	78
(i) Application to Appoint Guardian of the Person.....	78
(ii) Motion to Terminate Guardianship of the Person	79
(f) Directions on Any Question.....	80
IV GUARDIANSHIPS CONCERNING MINORS	83
1. CHILDREN'S LAW REFORM ACT.....	83
2. APPOINTMENT OF A GUARDIAN.....	83

TABLE OF CONTENTS

ix

3. PROCEDURE.....	85
4. PAYING OR DELIVERING ASSETS TO A CHILD	87
5. POWERS AND DUTIES OF A GUARDIAN.....	88
6. ENDING THE GUARDIANSHIP	88
7. ALTERNATIVES TO FULL GUARDIANSHIP.....	89
V GUARDIANSHIP LITIGATION	91
1. UNCONTESTED GUARDIANSHIPS.....	91
2. CONTESTED GUARDIANSHIPS	91
3. LAWYERS' DUTIES	92
4. COURTS APPROACHES.....	95
(a) Priorities	95
(b) Costs	96
(c) On the Horizon.....	97
PRECEDENTS.....	99
INDEX.....	219