

Removing an Attorney for Property or Personal Care in Ontario: When Can the Court Step In?

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A continuing power of attorney for property and a power of attorney for personal care are two of the most important and personal estate planning documents an individual can sign. They allow a trusted person (the attorney) to manage the grantor's property (e.g. finances, investments and real estate) and the grantor's personal care (e.g. health care, nutrition and shelter) if the grantor can no longer do so. The attorney is required to exercise their powers diligently, with honesty and integrity and in good faith, for the incapable person's benefit.

Unfortunately, given the powers they bestow, powers of attorney can also be susceptible to abuse. This can include when the attorney mismanages funds, refuses to account, or acts in their own self-interest. The incapable person's family members frequently ask whether an attorney who is abusing their authority can be removed.

The Court has the power to remove an attorney. However, there must be strong and compelling evidence of misconduct or neglect on the part of the attorney, and their removal must be in the incapable person's best interest.

This article will review where an attorney's authority comes from, what the law expects of them and how to go about removing an attorney who is not exercising their function for the benefit of the grantor.

Where Does an Attorney's Authority Come From?

In Ontario, continuing powers of attorney for property are governed by the Substitute Decisions Act, 1992, S.O. 1992, c. 30 ("SDA"). Under section 7 of the SDA, a person who has the capacity to do so may give a written power of attorney for property authorizing one or more people to do on their behalf anything in respect of property that the grantor could do if capable, except make a will. A power of attorney is "continuing" if it states that it is a continuing power of attorney or expresses the intention that the authority may be exercised during the grantor's incapacity to manage property.

Section 46 of the SDA authorizes a person to give a written power of attorney for personal care, authorizing the person(s) named as attorneys to make, on the grantor's behalf, decisions concerning the grantor's personal care. The categories of personal care are health care, nutrition, shelter, clothing, hygiene or safety.

The key is that the attorney derives their authority from the grantor. Unlike a guardian of property or guardian of the person, who is appointed by the court, an attorney is selected privately by the grantor while capable, and courts are often reluctant to override the grantor's chosen appointment.

What Are an Attorney's Duties?

Attorneys have onerous statutory and fiduciary obligations.

The principal statute is the SDA. Section 32 of the SDA states the following: "A guardian of property is a fiduciary whose powers and duties shall be exercised and performed diligently, with honesty and integrity and in good faith, for the incapable person's benefit."

A "fiduciary" is an individual who acts in good faith for the benefit of a vulnerable person, who puts the incapable person's interests first and avoids conflicts of interests. Fiduciaries are judged to a high standard because, among others, they have scope for considerable discretion. Acting "in good faith" means acting honestly, loyally, and with an unswerving intention to serve the best interests of the grantor.

In addition to these overarching principles, the SDA requires that the attorney do, among others, the following:

- meet the required standard of care: an unpaid attorney for property must exercise the degree of care, diligence and skill that a person of ordinary prudence would exercise in the conduct of their own affairs. A paid attorney is held to the higher standard of a person in the business of managing the property of others. Note that there is no statutory entitlement to compensation for an attorney for personal care (SDA, Subsections 32 (7)-(8));
- keep accounts of all transactions involving the grantor's property, as prescribed by [O. Reg. 100/96](#);
- consider the grantor's estate plan, avoiding dealings that would defeat specific gifts made in the grantor's will (SDA, Section 35.1);
- make expenditures that are reasonably necessary for the grantor's support, education and care, and for the support of any legal dependants (SDA, Section 37);
- explain their powers and duties to the grantor, encourage the grantor's participation in decisions, and foster regular personal contact between the grantor and supportive family and friends (SDA, Subsections 32 (2)-(5) and 66 (5)-(7)); and
- The attorney for personal care has the added statutory obligation to, insofar as possible, foster the grantor's independence (SDA, Subsection 66(8)).

How is an Attorney Removed?

If an attorney has breached one or more of the above-mentioned duties, how can they be removed?

If the grantor is capable of revoking and preparing a new power of attorney, they may simply revoke the power of attorney and appoint a new attorney. Note that the level of capacity required in this context is usually lower than what is typically required to manage one's property. Ontario uses a decision and time specific approach to capacity: a person's capacity is judged against the particular decision to be made, not in general terms. Also, a person's capacity may fluctuate over time. This means a person may be capable at one time on one day and incapable at another time.

If the grantor is not capable, judicial assistance may be required. The SDA does not contain a stand-alone provision titled "removal of an attorney." Concerned family members should consider two avenues: 1) applying to the court for directions regarding the conduct of the attorney or, if warranted, 2) an application to Court for an order removing the attorney. In addition to its statutory powers, the Superior Court of Justice has an inherent *parens patriae* jurisdiction to protect persons who are unable to protect themselves, which allows the court to fill gaps in the SDA and, where necessary, remove or replace an attorney for property without appointing a guardian. This jurisdiction is exercised cautiously and only for the benefit of the incapable person, not to resolve disputes among family members.

The court must consider two issues in assessing whether to remove an attorney:

1. First, there must be strong and compelling evidence of misconduct or neglect on the part of the attorney before a court should ignore the clear wishes of the donor; and
2. Second, the Court must arrive at the opinion that it is in the best interests of the incapable person for the attorney to be removed.

The analysis of these issues is contextual and fact specific.

Removal typically occurs through an application to appoint a guardian of property under section 22. Once a guardian is appointed, the continuing power of attorney terminates (SDA, Subsection 12(1)(c)).

The court has the power to find an attorney who breaches their fiduciary duties personally liable for resulting damage (SDA, Section 33). The offending attorney can be compelled by the court to pass their accounts under section 42 on the application of the grantor, a family member, the Public Guardian and Trustee or, with leave, any other person.

[Select Case Law where Attorneys were Removed](#)

In *Teffer v. Schaefer* (2008),^[1] the Ontario Superior Court of Justice stated that it should not lightly interfere with the attorney the grantor selected, and that removal requires strong and compelling evidence of misconduct or neglect on the part of the attorney. Personal friction between the attorney and other family members, or a belief that someone else would do a better job, is often not enough.

In *Aiello v. Bleta et al.*, (2020),^[2] the Ontario Superior Court of Justice removed an attorney for personal care (L) who was acting for an incapacitated mother and replaced him with the named alternate attorney (B). L had not been acting in good faith. He refused to approve the reimbursement of expenses incurred by B in caring for their mother. His failure to sign the consent forms demonstrated that he was not making treatment decisions when necessary. It also appeared that he was not attempting to foster regular contact between the mother and supportive family members and friends, and in particular the mother had not seen L's family in years.

In *BMO Trust Company v. Aubin*, (2025)^[3], the Ontario Superior Court of Justice terminated and invalidated a power of attorney for personal care due to a conflict of interest involving a compensated caregiver. The Court considered section 46(3) of the SDA which provides:

A person may not act as an attorney under a power of attorney for personal care, unless the person is the grantor's spouse, partner or relative, if the person,

- a) provides health care to the grantor for compensation; or
- b) provides residential, social, training or support services to the grantor for compensation.

Practical Takeaways

For family members concerned about an attorney's conduct, the bar to removing them can be high. It is crucial to carefully marshal the evidence, continue to visit and be in contact with the incapable person.

If significant financial mismanagement is suspected or if there is a real risk to the health and safety of an incapable person, an application can be brought on an urgent basis for interim relief. Note that only truly urgent matters will get heard in short order.

For attorneys, the lesson is clear: keep meticulous records, keep the grantor's funds separate from your own, avoid self-dealing and communicate openly with the grantor and their family.

Removing an attorney for property is fact-specific and procedurally demanding. If you have concerns about an attorney's management of a loved one's property or personal care, or you are an attorney facing allegations of mismanagement, obtaining legal advice early can help preserve the grantor's assets and avoid costly litigation.

This blog is provided for general information only and does not constitute legal advice.

^[1] Teffer v. Schaeffers, 2008 CanLII 46929 (ON SC)

^[2] Aiello v. Bleta, 2020 ONSC 62 (CanLII)

^[3] BMO Trust Company v. Aubin, 2025 ONSC 2298

