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Julia Fisher
Counsel
Ministry of the Attorney General
Office of the Public Guardian and Trustee
Toronto Regional Office
595 Bay Street, Suite 800
Toronto, ON
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Dear Ms. Fisher:

Re Proposed Regulation under the *Substitute Decisions Act, 1992*

I would like to express Advocis' appreciation for the opportunity to provide our comments to the Public Guardian and Trustee on the proposed regulation under section 83 of the *Substitute Decisions Act, 1992* (the "Act").

Advocis is a national professional association that is committed to preparing, promoting and protecting financial advisors in the public interest. We do this by providing a professional platform including career support, designations, best practices direction, timely information and professional liability insurance. This strengthens the relationship of trust and respect between financial advisors and their clients, the public and government. Advocis is Canada's largest association of financial advisors, representing life and health insurance licensees, and mutual fund and securities registrants across the country for over a century.

As indicated in your letter of August 14, 2008, the Public Guardian and Trustee is currently considering adding to the list of persons set out in Section 83(1) of the Act to add:

"A broker, investment dealer or securities dealer,
An insurance company or insurance broker or agent."

The Public Guardian and Trustee would thereby be entitled, as set out in Section 83(1) "...to have access, for the purposes of an investigation required by section 27 or 62, to any record relating to the person who is alleged to be incapable that is in the custody or control of..." a broker, investment dealer or securities dealer, an insurance company or insurance broker or agent. If there is an allegation that a person is incapable of managing property and that serious adverse effects are occurring or may occur as a result (section 27 of the Act) or if there is an allegation that a person is incapable of personal care and that serious adverse effects are occurring or may occur as a result (section 62 of the Act) the Public Guardian and Trustee will conduct an investigation and can obtain access to various records.

We are content with the proposed legislation and recognize that the Act and the proposed amendment is in the public interest. We would, however, like to suggest, the following:

1. Firstly, that the Public Guardian and Trustee should have access to such records referred to in section 83(1) *only* for the purpose of an investigation required by section 27 or 62 and for no other purpose.
2. Secondly, the Public Guardian and Trustee should seek access to the records in the possession, custody or control of the insurance company or investment dealer or securities dealer directly from the insurance company or investment dealer or securities dealer rather than attempt to obtain those records indirectly through the financial advisor. The insurance company and the investment/mutual funds dealer issues directly to the client information regarding the client's insurance policy trade confirmations, transactional information and annual statements concerning a life insurance policy. Those companies will, therefore, have robust systems for generating the information relating to the incapable person and will be able to respond in a timely and effective manner to the Public Guardian and Trustee's request.
3. Thirdly, if some of the records which are in the custody or control of the financial advisor relate not only to the person that is alleged to be incapable, but also relate to other entities such as trusts or corporations of which the incapable person is a shareholder, trustee, beneficiary or otherwise, then there may be consent or privacy issues which prevent disclosure of such information by the financial advisor to the Public Guardian and Trustee. While section 83(4)(2) states that "[t]he Public Guardian and Trustee is not entitled to have access to any information in the record that is personal information, as defined in the *Freedom of Information and Protection of Privacy Act*, relating to an individual other than the person who is alleged to be incapable", it does not deal with information relating to other entities which are not "individuals". We would recommend that this provision be amended to prevent the disclosure of information relating to legal entities (which may also constitute a record relating to the person who is alleged to be incapable) unless consent of the legal entity in question is first obtained by the Public Guardian and Trustee or, in the absence of consent, by Order of a court.

Once again, thank you for giving us the opportunity to provide our comments.

Yours truly,



Teresa Black Hughes CFP, CLU, RFP, FMA, CIM
Chair
National Board of Directors, Advocis