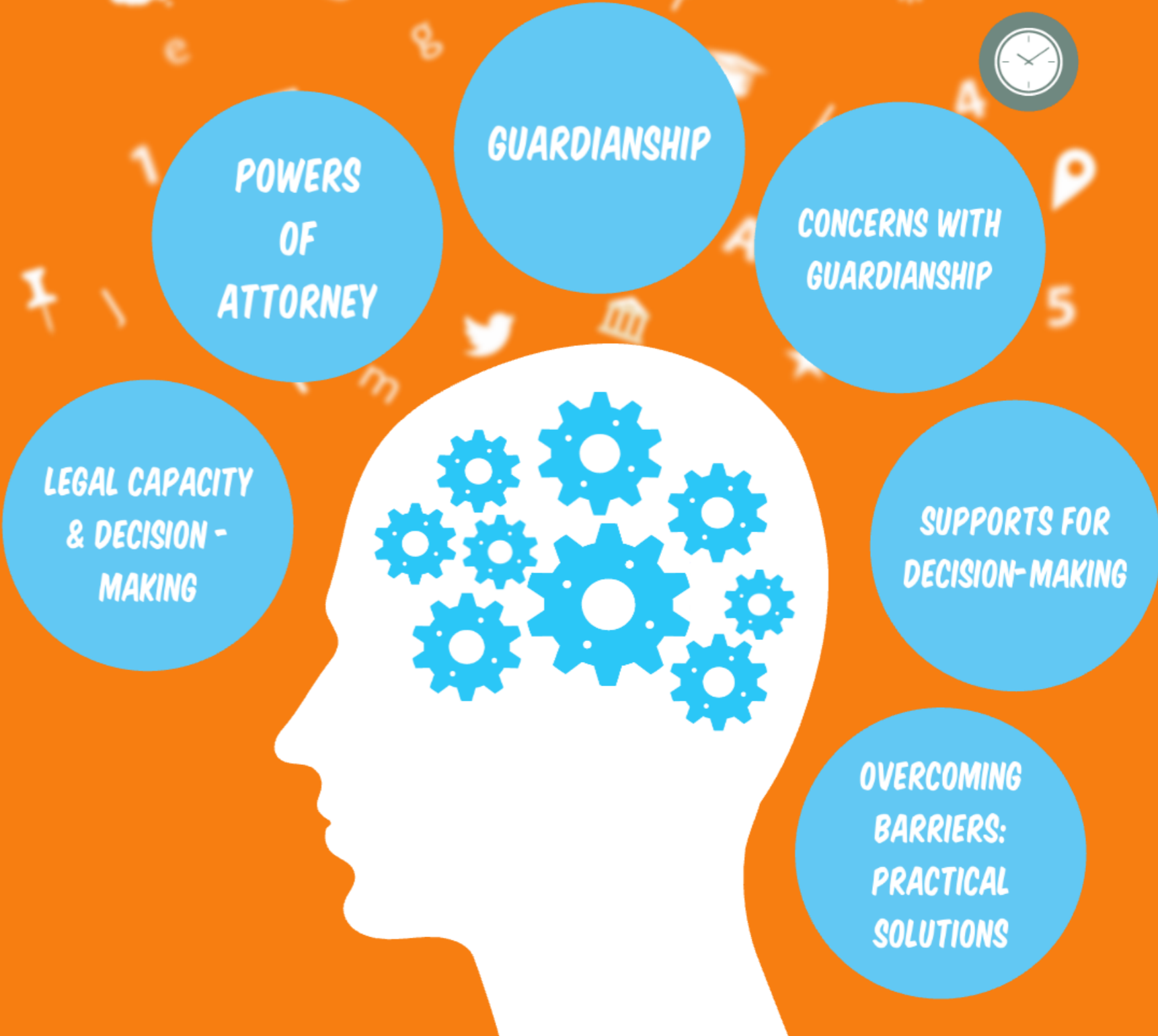


# GUARDIANSHIP IN ONTARIO

POORANLAW



# DISCLAIMER

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# ***PRESUMPTION OF CAPACITY***

- A person who is 18 years old or more is presumed to be capable of entering into a contract
- A person who is 16 years old or more is presumed to be capable of giving or refusing consent to personal care

**SUBSTITUTE  
DECISION-  
MAKERS**

# SUBSTITUTE DECISION-MAKERS ARE REQUIRED WHERE:



- A person lacks capacity
- A decision needs to be made

# PROPERTY DECISIONS

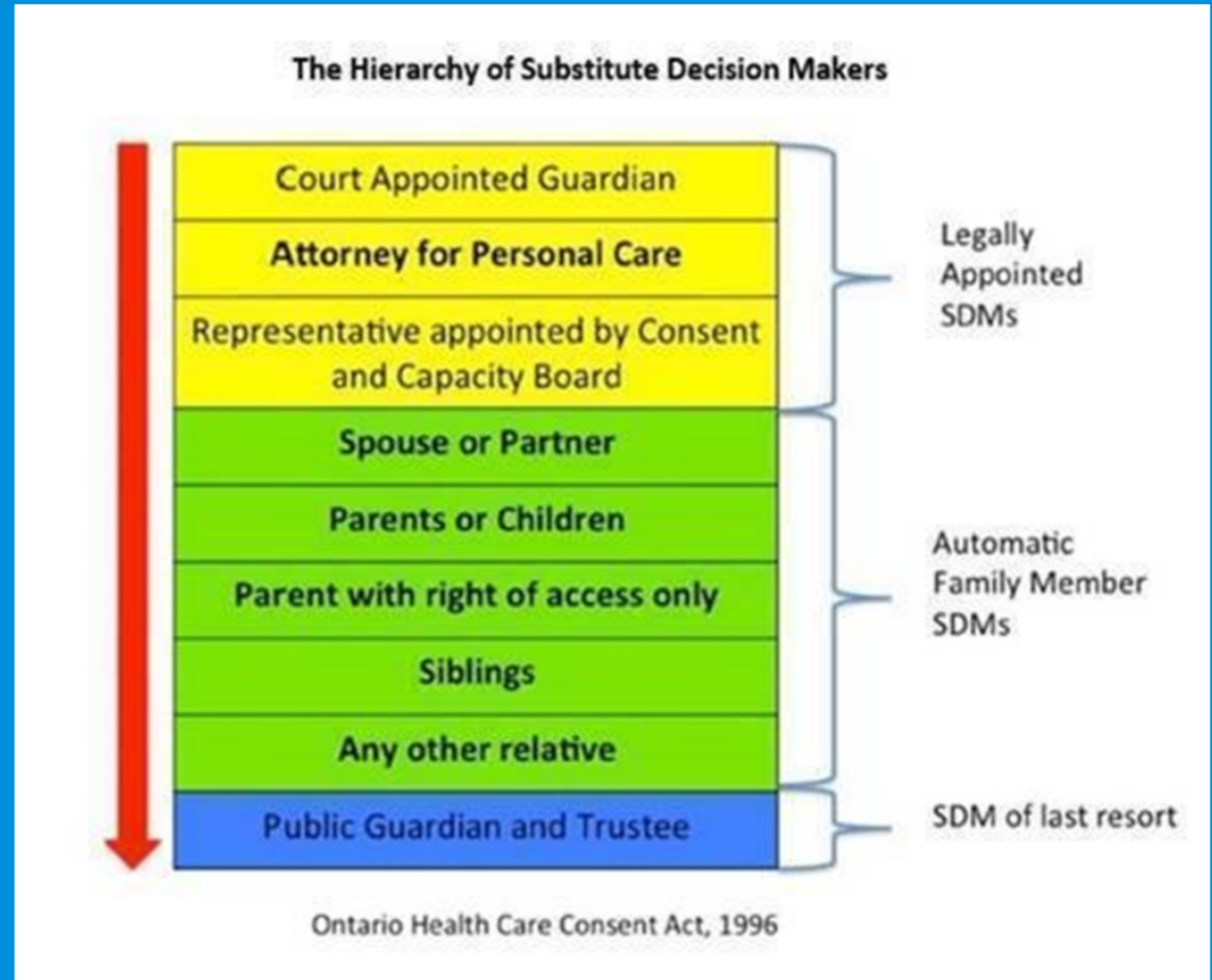


Where a person is incapable of managing property:

- Guardian of Property
- Attorney for Property
- Public Guardian and Trustee (PGT)

# HEALTH CARE DECISIONS

Where a person is incapable of consenting to health care decisions:



# WHEN MAKING A DECISION, CONSIDER:



- Supports, education and/or accommodation to exercise decision-making capacity
- Powers of Attorney (Property, Personal Care)
- Trustee programs and other alternatives
- Guardianship, as a last resort

# **PRESUMPTION OF CAPACITY**

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**SUBSTITUTE  
DECISION-  
MAKERS**



# ***POWERS OF ATTORNEY***

- Gives someone the authority to act on your behalf while you are alive
- You must meet specific capacity requirements to grant Powers of Attorney

***CONTINUING  
POWER OF  
ATTORNEY FOR  
PROPERTY***

***POWER OF  
ATTORNEY FOR  
PERSONAL CARE***

## **CONTINUING POWER OF ATTORNEY FOR PROPERTY**

- *Specifically for matters relating to property (real property, finances, etc.)*
- *May take effect when the grantor is capable*
- *Continues when the grantor is incapable*
- *Grantor and attorney(s) must be over age 18*

## **POWER OF ATTORNEY FOR PERSONAL CARE**

- *Specifically for matters relating to health care, medical treatment, shelter, nutrition, hygiene and safety*
- *Only takes effect when the grantor is incapable*
- *Grantor and attorney(s) must be over age 16*

# GUARDIANSHIP

- **Guardian of property:** may make financial decisions on behalf of another person
- **Guardian of personal care:** may make personal care decisions on behalf of another person, related to health, nutrition, shelter, clothing, hygiene and safety

APPOINTING  
A GUARDIAN

## ***APPOINTING A GUARDIAN***

- **Court-appointed guardian:** A legal guardian may be appointed by the court for decisions related to property and/or personal care
- **Statutory guardian:** The Public Guardian and Trustee (PGT) may be appointed as guardian of property

# CONCERNS WITH GUARDIANSHIP

- **Loss of Rights:** the person's right to make a decision, or express any will or preference related to the decision, is stripped away
- **Misuse of Powers:** Minimal monitoring or oversight of the guardian
- **Barriers to Challenging Guardianship:** Usually involve a court application that is costly, complicated and intimidating
- **Once in place, guardianship is difficult to reverse**

**INDIVIDUAL  
IMPACT**

**HUMAN RIGHTS  
OBLIGATIONS**

## ***INDIVIDUAL IMPACT***

- **Diminished functional ability, health status and well-being**
- **Social isolation**
- **Loss of self-esteem, feelings of hopelessness, inadequacy and incompetency**
- **Feelings of being demeaned and socially stigmatized**
- **Financial abuse, physical abuse and neglect, restriction of rights**

# CONSIDER OUR HUMAN RIGHTS OBLIGATIONS



- UN Convention on the Rights of Persons with Disabilities (CRPD)
- *Canadian Charter of Rights and Freedoms*, section 7 and 15
- *Ontario Human Rights Code*



# **SUPPORTS FOR DECISION-MAKING**

**ACCOMMODATIONS  
& SUPPORTS**

**SUPPORTED  
DECISION-MAKING  
IN OTHER  
JURISDICTIONS**

## ACCOMMODATIONS & SUPPORTS

- *Informal Supports for Decision-Making:* accommodating someone with a disability in the exercise of their legal capacity
- Examples
  - plain language
  - circles of support
  - visual aids
  - interpretive/communication support

## **SUPPORTED DECISION-MAKING IN OTHER JURISDICTIONS**

- *Formal*, legally recognized process involving persons appointed as decision-making supporters
- Alberta, British Columbia, Manitoba, Saskatchewan, and Yukon: alternatives to guardianship embodied in the legislation

## **BARRIERS TO SERVICES AND SUPPORTS**

- Managing a bank account or Registered Disability Savings Plan (RDSP)
- Dealing with the Canada Revenue Agency (CRA) or other federal departments
- Dealing with Service Ontario (e.g. health card, accessible parking permit)
- Receiving LHIN Family-Managed Home Care Funding
- Receiving an inheritance, pension or life insurance proceeds
- Signing support and tenancy agreements