QUINTE HEALTHCARE CORPORATION

Appendix A: Substitute Decision-Maker (SDM)

Hierarchy of Individuals/Agencies who may Give or Refuse Consent

1. Guardian – Court appointed under the Substitute Decisions Act
2. Power of Attorney for personal care
3. Representative appointed by Consent and Capacity Board
4. Spouse or partner
    a. Spouse means a person of the opposite or same sex, to whom the person is married, or with whom the person is living or, immediately before the death, was living in a conjugal relationship outside marriage
    b. The Health Care Consent Act defines partners as two persons who have lived together for at least one year prior to the patient's admission and have a close personal relationship that is of primary importance in both persons' lives

*Note: Two persons are not spouses if they live separate and apart as a result of a breakdown of their relationship.

5. Child or parent (16 and over)
6. Parent with right of access only
7. Brother or sister
8. Any other relative (related by blood, marriage or adoption)
9. Public Guardian and Trustee

(HCCA, subsection 20(1), 1996)

The highest-ranking person on this list, if available, capable and willing, is the substitute decision-maker for the incapable person. The substitute decision-maker must also be at least 16-years-old, unless he or she is the capable person's parent and is not prohibited by Court Order or separation agreement from having access to the incapable person or giving or refusing consent on his or her behalf (HCCA, subsection 20(2), 1996). The health practitioner must make reasonable efforts to contact a potential SDM in order of priority. SDMs must themselves be capable, available and willing to act an SDM.

In the absence of a potential SDM of higher rank, if two or more persons of equal rank claim the authority to make the decision and disagree about whether or not to consent, the decision must be referred to the Public Guardian or Trustee. When there is disagreement, health practitioners should encourage SDMs to reach a consensus.

It is important to note that when determining what is in an incapable person's best interests, an SDM is required to take into consideration the following:

(a) the values and beliefs that the person knows the incapable person held when capable and believes he or she would act on if capable;
(b) any wishes expressed by the incapable person with respect to the treatment that are not required to be followed and;
(c) the following factors:

1. Whether the treatment is likely to:
    a. Improve the incapable person's condition or well-being;
    b. Prevent the incapable person's condition or well-being from deteriorating or;
    c. Reduce the extent to which, or the rate at which, the incapable person's condition or well-being is likely to deteriorate.

2. Whether the incapable person's condition or well-being is likely to improve, remain the same or deteriorate without the treatment.

3. Whether the benefit the incapable person is expected to obtain from the treatment outweighs the risk of harm to him or her.

4. Whether a less restrictive or less intrusive treatment would be as beneficial as the treatment that is proposed.