

## Buzbuzian, Andrea AG:EX

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**From:** Buzbuzian, Andrea AG:EX  
**Sent:** Friday, November 2, 2018 5:49 PM  
**To:** Dillon, Brian FIN:EX  
**Subject:** RE: Adult Guardianship Act s and POAA s. 41(2)(g)

Hi Brian. For sure, let's talk next week. I started to draft an email response – it's nice to think about something else than the Legal Profession Act for a minute – but, it was getting too long.

Andrea

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**From:** Dillon, Brian FIN:EX  
**Sent:** Friday, November 2, 2018 4:15 PM  
**To:** Buzbuzian, Andrea AG:EX  
**Subject:** RE: Adult Guardianship Act s and POAA s. 41(2)(g)

PS: I see under AGA s. 32 that it is actually the Health Authority Designate that makes the determination of incapacity for the purposes of Part 2.1 so perhaps that is the qualified professional?

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**From:** Dillon, Brian FIN:EX  
**Sent:** Friday, November 2, 2018 4:10 PM  
**To:** Buzbuzian, Andrea AG:EX  
**Subject:** Adult Guardianship Act s and POAA s. 41(2)(g)

Hey. A quick (ha ha ha!) question.

As I you will know, under the AGA, the term "qualified health care provider" is defined in section 1 ("qualified health care provider" means a medical practitioner or a member of a prescribed class of health care providers;) and regulations (s. 3(2) of the Statutory Property Guardianship Regulation) prescribe certain additional health care providers for that definition. Is this a good definition of qualified professionals who can determine capacity of adults (in BC)?

[I also see that under the POAA, the LGIC has the power to make regulations "(g) prescribing classes of health care providers whose members may act as qualified health care providers." Doesn't seem to be any regulations under this provision – is that correct? Does that mean no health care provider can make a determination under 26(3) re incapacity and it is only a court that can do so?]

The reason I am asking is in the White Paper on LOTA we have proposed in the legislation that persons filing reports consider incapacity (as the names of beneficial owners will be released in a public website):

### Identification of incapacity

19 (1) For the purpose of preparing a disclosure report, a reporting body must make reasonable efforts to identify whether any of the interest holders are individuals in respect of whom a court or qualified professional has determined that the individual is incapable of managing that interest holder's financial affairs.

<https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/buying-and-selling/land-owner-transparency-act-consultation/lota-white-paper-june-2018.pdf> at pages 22-3

As you can imagine, a lot of questions were raised about this provision.

One question was who is a "qualified professional".

Do you think we should consider adopting the AGA definition of "qualified health care providers" for the LOTA? As the LOTA will involve people outside the province, we would likely have to add in some language about equivalent professionals outside the province. I presume we should not look to the POAA. Is there any other definition we should consider looking to?

I realize you are swamped with work and there is no great rush on this but perhaps we can discuss next week at some point.

Cheers, Brian