

## **Appendix 1: Principles for giving or refusing consent to a treatment on an incapable person's behalf<sup>1</sup>**

### **Principles for giving or refusing consent**

- (1) A person who gives or refuses consent to a treatment on an incapable person's behalf shall do so in accordance with the following principles:
  1. If the person knows of a wish applicable to the circumstances that the incapable person expressed while capable and after attaining 16 years of age, the person shall give or refuse consent in accordance with the wish.
  2. If the person does not know of a wish applicable to the circumstances that the incapable person expressed while capable and after attaining 16 years of age, or if it is impossible to comply with the wish, the person shall act in the incapable person's best interests.

### **Best interests**

- (2) In deciding what the incapable person's best interests are, the person who gives or refuses consent on his or her behalf shall take into consideration,
  - (a) the values and beliefs that the person knows the incapable person held when capable and believes he or she would still act on if capable;
  - (b) any wishes expressed by the incapable person with respect to the treatment that are not required to be followed under paragraph 1 of subsection (1); and
  - (c) the following factors:
    1. Whether the treatment is likely to,
      - i. improve the incapable person's condition or well-being,
      - ii. prevent the incapable person's condition or well-being from deteriorating, or
      - iii. 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.

### **Reference**

1. *Health Care Consent Act*. SO 1996, c 2, Schedule A, s 21.