

## PRESS RELEASE

### **FOR IMMEDIATE RELEASE**

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### **Concerns about caregiver's rights highlight need for government to enact Representation Agreement Act amendments**

A recent story by CBC's Kathy Tomlinson draws attention to the role of the Health Authorities and the Public Guardian and Trustee (PGT) in responding to concerns of abuse. Tomlinson's story, *B.C. man loses right to care for wife*, describes George Brent's effort to honor his wife's wishes of being cared for at home and to advocate for proper care at the hospital she had been admitted to. As the story reports, when Brent, 83, refused to pay for what he believed was sub-standard care, the Health Authority stepped in. Interior Health used a Certificate of Incapability procedure to involve the PGT in his wife's financial affairs. This procedure suspends an Enduring Power of Attorney already in place. The PGT has the discretion to allow the Enduring Power of Attorney to continue.

The story suggests that two BC laws, which have yet to be implemented, could have given the Brents 'more say over their health and financial affairs' and explains that these laws are not yet in effect due to lack of government funds.

What was not addressed in the story was the fact that there is a law currently in place which does give 'seniors and other vulnerable citizens' more say over their health and personal care matters, like living arrangements, diet and hygiene. The Representation Agreement Act allows British Columbians to authorize someone they know and trust to help them carry out their wishes for health and personal care if they are unable to do so themselves. In B.C., health care and personal care matters cannot be covered by the Enduring Power of Attorney.

"The real issue is that British Columbians are not being informed of their options," says Patricia Fulton, President of the non-profit Nidus Personal Planning Resource Centre. "If more people were informed of and given the opportunity to make a Representation Agreement, then situations like these might be avoided. Families would be prepared in advance. Unfortunately, many in B.C. do not know the Representation Agreement is available to them."

The Representation Agreement Act was developed by citizens and community groups such as the Alzheimer Society of BC, the BC Retired Teachers' Association, and the BC Coalition of People with Disabilities. "Preventing abuse was one of our primary concerns," continues Fulton, who was involved in the law reform. "It's a very powerful legal tool. Before we had the Representation Agreement, we had no way to legally lay out our wishes for health care or personal care."

"A Representation Agreement enables adults to create their own support and safety net. In my experience, seniors want to avoid the involvement of the Public Guardian and Trustee. However, Representation Agreements are not accessible enough to seniors," says Fulton.

Like the two laws discussed in Tomlinson's story, the Representation Agreement Act is also awaiting amendments. The amendments to the Representation Agreement Act would make the Representation Agreement more accessible for seniors who want to make legally enforceable arrangements in the event of future mental incapacity. Unlike the Adult Guardianship Act amendments, these amendments are not costly to government.

"Government needs to enact the Representation Agreement Act amendments now so seniors can take charge of their own lives. We also need government's help to educate the public," says Fulton.

– 30 –

This press release comes in response to a CBC news report published on September 7, 2010. To access the CBC article, please follow this link:

<http://www.cbc.ca/canada/british-columbia/story/2010/09/06/bc-rightsremoved.html>

*Learn more about making and registering Representation Agreements and Enduring Powers of Attorney at the Nidus website [www.nidus.ca](http://www.nidus.ca)*

*Nidus is a non-profit, charitable organization. Nidus was established in 1995 by citizens and community groups to ensure the public had an accessible source of information on personal planning and in particular about Representation Agreements, which are an innovative legal tool for addressing the critical needs of B.C.'s aging population.*

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See Backgrounder following.

## **Backgrounder**

In the late 1980's citizens and community groups began serious discussions about reforming adult guardianship legislation. The Alzheimer Society of BC and the BC Association for Community Living obtained a special grant from the Law Foundation of BC to undertake a 3-year law reform effort.

A unique feature of this law reform project is that it was initiated by citizens and community groups but also involved professionals, including lawyers and health care providers.

This community-driven process achieved consensus around a set of principles that focused on providing legal alternatives to adult guardianship and respect for self-determination.

Four pieces of legislation were passed unanimously in the legislature in 1993. The Representation Agreement Act was described as 'the people's tool' and is the foundation of the reform. The intent of the Representation Agreement Act is to enable citizens to make legally enforceable arrangements for personal and financial affairs if they need help today or want to plan for the future in the event of mental incapacity. The intent of the other Acts is to provide a safety net in case a legal arrangement is not yet in place or there is a gap in the existing arrangements.

Under adult guardianship you lose your civil rights; a Representation Agreement preserves your rights while providing support and safety. It allows you to authorize someone you trust and who knows you to help you speak up for your wishes and to carry out your wishes if you are not able to do so yourself. Safeguards are built into the Representation Agreement Act. The safeguards take a two-prong approach: 1) to prevent abuse and 2) to ensure your wishes are legally enforceable.

The emphasis of the law reform is on enabling self-determination and ensuring that the state is involved in your personal affairs only if absolutely necessary and only as the last resort. This is also a cost-effective approach. Adult guardianship is costly to taxpayers and to your estate. The Public Guardian and Trustee charges fees to your estate when they become involved.

As with many reform initiatives, changes in political leadership and the passage of time can lead to a loss of momentum and vision. Some parties will even decide to carve out their own path which may depart from the original intent.

However, citizens and community groups have never lost focus on the importance of the Representation Agreement Act to provide support while preserving the rights of seniors and other vulnerable citizens. Although this law came into effect in 2000, few citizens have heard about it and those who do want to make a Representation Agreement report that the requirement to consult a lawyer for certain powers is restrictive. No other province makes such a demand.

An amendment to the Representation Agreement Act to address this requirement was passed unanimously in the legislature in 2007 and is awaiting enactment. This change will make Representation Agreements more accessible, especially to seniors who want to plan for their future.

## **Answers to questions highlighted in recent CBC news stories**

*Do responses to elder abuse depend on pending amendments to the Adult Guardianship Act being enacted?*

Legislation that gives Health Authorities the mandate to respond to abuse, neglect, and self-neglect has been in effect since February 2000 (see Part 3 of the Adult Guardianship Act). The Public Guardian and Trustee and the Health Authorities have spent significant time and public funds to develop protocols and provide training for their staff, police, and financial institutions on the elder abuse legislation.

*What is the focus of the Adult Guardianship Act amendments that are pending?*

Part 2 of the Adult Guardianship Act deals with procedures whereby a family member, friend, or other party may apply to the Supreme Court to be appointed guardian over an adult's financial and legal affairs and/or health and personal care matters. It also gives the Public Guardian and Trustee authority to take over the adult's affairs when a Certificate of Incapability is issued by a health care provider designated by the Health Authority.

The current amendments do not reflect British Columbia's 1993 consensus for reform, which would have seen the elimination of the Certificate of Incapability procedures. Rather, the current amendments appear to be modelled after Ontario's adult guardianship legislation. The Certificate of Incapability procedures are retained and the roles of the Health Authorities and the Public Guardian and Trustee are expanded. This makes the system costly to implement and maintain. It remains to be seen whether this approach will ensure adult guardianship is the last resort for seniors and 'other vulnerable citizens.'

*Why is there no legislation for Care Facility Admission?*

The 1993 reform package included legislation governing care facility admission. However, care providers lobbied for changes because they felt it was not feasible to implement. The reforms were never put into effect and new amendments are pending.

However, people can include living arrangements in their Representation Agreement. A Representation Agreement is the only way to appoint someone to help you make decisions or to act on your behalf for health care and personal care matters if you become mentally incapable.

The advantage of a Representation Agreement is that it not only covers decisions about giving or refusing consent for admission to a care facility, it includes decisions about care once you are in a facility. The recent Community Care and Assisted Living Act Regulation clearly recognizes that representatives appointed in a Representation Agreement have rights to information and authority to make decisions. Read more in the Nidus Newsletter at <http://nidus.ca/PDFs/NidusNewsVol3Oct2009.pdf> and visit the Nidus website at [www.nidus.ca](http://www.nidus.ca)

### **\*\*Other Issues of Nidus News**

[May 2010](#) – fact sheet on Enduring Power of Attorney.

[March 2010](#) – message from the Attorney General of B.C. on the 10<sup>th</sup> Anniversary of the Representation Agreement Act. Read about research and feature stories and watch a video.

[February 2010](#) – Popular with seniors, this issue features tools adults can use to communicate with their representatives.