

Speak now, while you still can

A new online registry will enable incapacitated people to make known their wishes, Sun money columnist Michael Kane reports

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Who will make health-care decisions on your behalf if you become incapacitated as a result of illness or injury?

And how will caregivers know whom to call if you appoint a personal representative to speak for you when you can't speak for yourself?

British Columbia has unique legislation allowing individuals to make representation agreements setting out their wishes and appointing relatives or trusted friends to make health and personal care decisions on their behalf. The agreements also cover routine management of financial affairs.

The agreement is a legal tool that your representative can take to a doctor to show, for example, that you don't want to be in pain, even if massive drug doses could hasten your death. Or it can be shown to your banker to ensure your bills get paid.

It also can be used to safeguard personal care preferences -- anything from diet and hairdressing appointments, to religion and home-care arrangements -- if you become mentally incapable.

Until now, however, hospitals and other interested parties had no way of finding out if a representation agreement had been made and how to contact the representative.

That all changes with today's launch of the Nidus eRegistry at www.rarc.ca, an online registry where you can store your information so doctors, bankers, lawyers and other authorized individuals can find out if you have an enduring power of attorney and/or representation agreement.

Just as important, the registry will also tell them if you have revoked any earlier agreements or powers.

An enduring power of attorney is a document prepared by a lawyer or notary appointing someone to handle your financial and legal affairs. It comes into effect as soon as it is signed and endures if you become mentally incapable. It covers issues beyond the scope of standard representation agreements, including the sale of real estate, managing a business, and directives such as the care of dependents.

Representation agreements are the only planning tool for health and personal care directives and don't necessarily need input from a lawyer. They are a good idea for anyone 19 years or older.

The Nidus eRegistry is the brainchild of the non-profit Representation Agreement Resource Centre, a registered charity, which offers the example of a woman injured in an accident and lying unconscious in hospital.



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Joanne Taylor shows
Bernard and Freda
Jackson a Web site that
records their health
needs.**

The hospital could identify her representative from the registry. The representative could then get money from the woman's bank account to pay important bills, hire a lawyer to file suit over the accident, and give consent to doctors for medical treatment such as surgery.

Many people prefer to have a close friend make personal and medical decisions for them instead of family members, but under the law doctors must ask family members for consent unless you appoint a legal representative.

The registry means peace of mind for couples like Vancouver's Bernard and Freda Jackson who have named each other as their representatives. Their alternative representatives, their sons, live in England.

By spending \$25 to register at Nidus -- Latin for nest -- they ensure that the right person can be reached if one or both of them is incapacitated.

Freda, 78, who was a social worker with the elderly before she retired, says care and dignity are enhanced when an individual chooses someone they trust to make sure their wishes and values are respected.

"It's a great concern if you get Alzheimer's," she said. "It's much better for the patient and the caregivers if everybody knows what you want."

Bernard, 79, doesn't want to be kept on life support if sickness or injury means he could only survive in a vegetative state.

The agreement means that not only will his wishes be respected, but his loved ones and caregivers will be spared the agony of making heart-wrenching decisions on his behalf.

"You cannot address euthanasia at all in your representation agreement, but most people make it clear they just want to be comfortable," said Joanne Taylor, executive-director of the Representation Agreement Resource Centre.

Representation agreements can also be used to address extreme treatments such as electric-shock therapy for mental illness, or abortion, and to set out your wishes regarding admission to any kind of care facility.

Contrary to popular opinion, married couples do not automatically have the right to handle their spouse's affairs if he or she is injured or ill.

Your spouse does not have the right to take money from your bank account, get confidential information such as income tax information, or even sell a jointly owned car unless there is a power of attorney or representation agreement.

If there is no legal agreement in place, the spouse must hire a lawyer and go to court which takes time, costs money and may require the posting of a bond.

The Representation Agreement Resource Centre recently helped a woman whose husband, in his 50s, had an unexpected stroke. She desperately needed cash from a term deposit that was in his name.

Although the husband would not be deemed legally capable of acting on his own behalf, he was able to make a representation agreement with his wife as his representative because they are in a trusting relationship and he can communicate with her.

The alternative would have been for the wife to apply to the court to be granted powers to act on his behalf. Taylor said that could cost \$2,000 to \$3,000 and then, on recovery, he would have to go back to

the court and possibly spend another \$2,000 to \$3,000 to reverse the appointment.

Unfortunately, the wife may yet have to go to court if she can't make the mortgage payments and has to sell the home. Even as joint tenants, if he is still alive, she needs his signature to sell.

"It's a Catch-22, a real dilemma for people," said Taylor. "Everybody should have a representation agreement and grant powers of attorney if they can."

British Columbia is believed to be the only jurisdiction in the world where those who are deemed incapable of entering into a traditional contract, perhaps because of illness, injury or disability, can make a representation agreement, thereby avoiding expensive and intrusive guardianship and government involvement.

"We are being watched by the world," said Taylor, who holds a masters degree in adult education and previously worked at The People's Law School and the Alzheimer's Society.

"In other jurisdictions, if you don't plan ahead of time when you are legally capable, it falls to the courts or public trustee to manage your affairs. They, of course, move slowly, have to charge fees, and don't know you."

The Representation Agreement Resource Centre is at 411 Dunsmuir in Vancouver. For more information, call 604-408-7414 or visit www.rarc.ca

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REGISTRY BENEFITS

The non-profit Representation Agreement Resource Centre launches an online registry today at www.rarc.ca for representation agreements, enduring powers of attorney and revocations.

The benefits are:

- A secure way to store information, so you know where it is.
- A simple, quick way for hospitals and others to know who to contact if you are incapacitated.
- A safeguard for banks and others to see if you may have made a more recent document.

The user-pay registry allows you to register contact information and a copy of the actual document. It enables self-determination and saves time and money for institutions that are required to locate a legal decision-maker when an individual is incapable.

Privacy and access to information on the registry are controlled by the individual who registers.

Third-party access to the registry is pre-authorized by the Law Society of B.C.'s Juricert program.

Contact information in the registry can be easily updated and is effective immediately on the change.

The registry maintains previous registrations to provide both a historical and current tracking of an individual's plans and wishes.

Collection, storage and retrieval of information is managed by Gateway File Systems, a private, Victoria-based company that helped set up the Organ Donor Registry.

Ran with fact box "Registry Benefits", which has been appended to the end of the story.

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