

Guardianship News

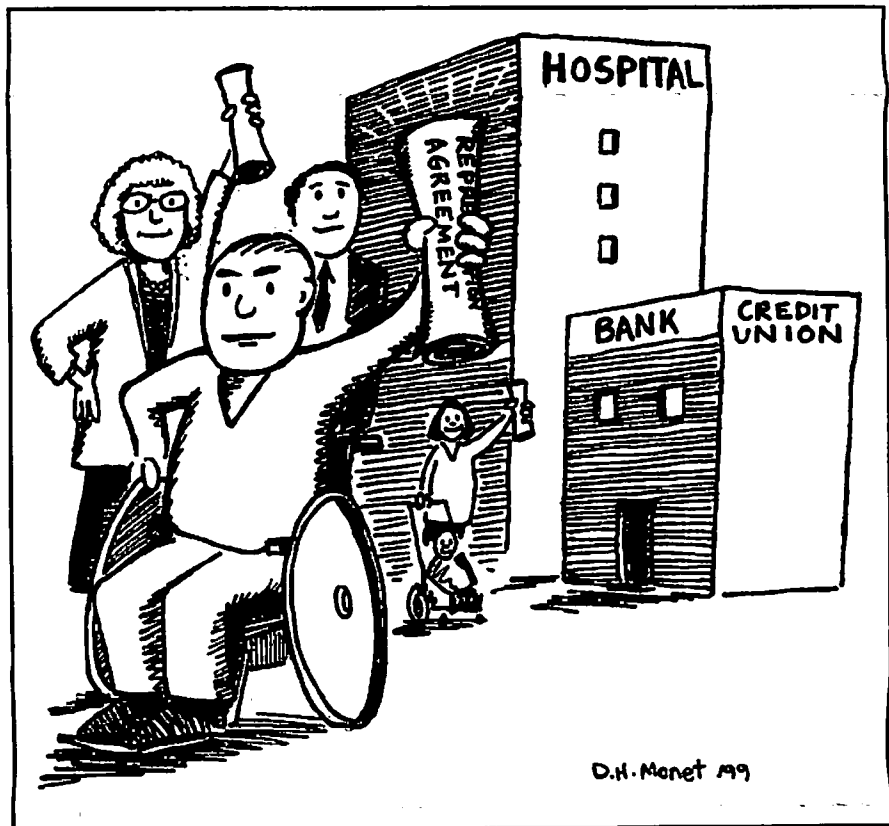
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Adult Guardianship Law Reform Takes A Step Forward

After several weeks of intense negotiations involving the Community Coalition for the Implementation of Adult Guardianship Legislation, other stakeholder groups, the Deputy Attorney General and the Public Trustee, the British Columbia government proclaimed on June 29, 1999 several major components of the 1993 package of four Acts that reform adult guardianship in the Province. In order to make this proclamation effective, Bill 92 - *The Adult Guardianship Statutes Amendment Act* was introduced and passed in the Legislative Assembly during the recent session.

With the proclamation, which will be in force on February 28, 2000, representation agreements will become the new planning tool for assisted or substitute-decision making in legal, financial, health and personal care. There will also be a clear procedure for giving consent for health care under the *Health Care Consent Act*, a process for responding to the abuse, neglect or self-neglect of adults under Part 3 of the *Adult Guardianship Act* and reforms to the Office of the Public Trustee un-



der the *Office of the Public Guardian and Trustee Act*.

This selective proclamation is another step forward for British Columbia in the 10 year community-initiated journey to reform the Province's outmoded and paternalistic adult guardianship system. It will offer more opportunity for people to use family and friendship-based alternatives to guard-

ianship. However, what was left out of the proclamation package signals that there is still a considerable way to go before reform is complete.

Here is what still remains to be done:

Part 2 of the *Adult Guardianship Act* was not proclaimed and as a consequence the *Patients*

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Left to right: Public Trustee Jay Chalke, Tom Klopp and Christine Gordon of the Community Coalition for the Implementation of Adult Guardianship Legislation at the B.C. Legislature on Proclamation day.

Property Act will not be repealed. This vital section of the *Adult Guardianship Act* would replace the *Patients Property Act* and change the process for obtaining guardianship orders from the court. In doing so, it would eliminate the violations of due process and human rights that can occur now with the *Patients Property Act*. It would also give the court more options to consider when reviewing an application for adult guardianship (called committee-ship in the *Patients Property Act*).

The Care Facilities Admission Act was not proclaimed. This means that there is still no process in place for obtaining consent for admission to a care facility or for obtaining consent for the use of restraints in both acute and long term care facilities in the Province.

There will be no prescribed advocacy for adults who protest a finding of incapability of a proposed health care treatment or the appointment of a substitute decision-maker. Although there will be a Health Care Decisions Review Board, adults will only be able to request that the Board review a substitute decision maker and there will be no guarantee that they will be informed of their rights or assisted by an independent advocate.

As part of the negotiations that brought about the June 29 proclamation, the Attorney General, through the Office of the Public Trustee, agreed to undertake the following plan:

- review the unproclaimed components of the law reform package within a reasonable time frame;

- limit some of the negative human rights effects of maintaining the *Patients Property Act* by ensuring that pre-existing representation agreements will prevail in most cases over certificates of incapability which are issued without a court process under the *Patients Property Act*. (In the case of both pre-existing standard representation agreements that include finances and enhanced representation agreements that do not cover all of an adult's property, the Public Guardian and Trustee will terminate its committee-ship if satisfied that it is not necessary to become involved.);
- commit \$50,000 of the 1999/2000 budget to developing a community based advocacy approach for the *Health Care Consent Act*;
- ensure an independent evaluation of the effectiveness of the four Acts.

In the debate on second reading of the *Adult Guardianship Statutes Amendment Act* Val Anderson, Liberal MLA (Langara), aptly concluded: "I simply wish to say that thank goodness, after all this time, it has come to pass. The task is not 50 percent done but at the most only 25 percent accomplished, and the main task is ahead of us. I trust that both the government and the opposition will continue to work with the people of the Province and that this will continue to be what it has been from the beginning: a people's bill with government co-operation." □

Y2K Representation Agreements: What to Expect with Proclamation

Representation agreements will look a little different from what was originally envisioned in the 1993 law as a result of negotiations that led to the proclamation of the Act. Here is what you can expect to see with the changes.

Powers:

As the *Representation Agreement Act* provides, British Columbians can choose to make a representation agreement with standard or enhanced powers. A standard representation agreement covers routine financial matters, major health care, personal care and legal matters. You can make a standard agreement without consulting a lawyer. Changes with proclamation relate primarily to the routine financial matters in a standard agreement.

If you choose in a standard agreement to have a representative for your finances, and the representative is not your spouse, then you must name a monitor. (A monitor will be an option for enhanced agreements and for non-financial matters in standard agreements.) A monitor can be any person that you know who can watch over your agreement and promote it working the way you planned.

You can expect that routine financial matters will cover things like paying bills and depositing cheques. However, the govern-

ment will set out in regulations a more precise definition of how your representative in a standard agreement can manage other financial routines like savings bonds or RRSP accounts, if you have them.

Another change with a standard agreement is that your representative for health care cannot refuse life supporting care or treatment on your behalf.

Registration:

There will be no registry for representation agreements. Instead, you will use your representation agreement in the same way that people have used enduring powers of attorney by presenting it to the people or institutions who will need to see it. These "third parties" (as they are called in law) can include among others your doctor, a hospital, a long-term care facility or group home, a bank, credit union or trust company.

Certificates:

As expected, all representation agreements will be accompanied by certificates signed by your 2 witnesses, the monitor (if one is named) and the representative (the certificate for representative is a new provision). All of these certificates will ensure that the signers understand their duties and responsibilities. The format for these certificates will be developed, along with the regulations,

prior to the Act coming into force on February 28, 2000.

Signing:

The signing procedure for a representation agreement has been changed. It is not necessary to have all of the signers (you, your representative(s), or monitor) together at the same time. However, witnesses will still have to be present to watch you sign your agreement.

Legal Authority:

All representation agreements made prior to the "coming into force" date, that are done in accordance with the law (including the certificates) will automatically have legal effect on February 28, 2000.

All of this information, along with the step by step process of how to make a representation agreement will be available as soon as possible in updated versions of "Walking Through a Representation Agreement" and the "Guide to Helping Others Make Representation Agreements". Contact the Representation Agreement Resource Centre for information on these materials or to connect with speakers for presentations. □



Representation
Agreement
Resource Centre

Representation Agreement Resource Centre

Keeping the Faith

The Representation Agreement Resource Centre is a non-profit charitable society created by the organizations and individuals who have been part of the Community Coalition for the Implementation of Adult Guardianship Legislation. The Centre's purpose is to keep the faith of the work that was undertaken by the Representation Agreement Task Group who used action research and community development to promote implementation of representation agreements from the ground-up. During four years of work, the Task Group learned that citizens of the Province are committed to personal decision-making that remains within the network of

trusted family and friends, and they want to ensure this by using representation agreements that are affordable, accessible and simple to make. The Representation Agreement Resource Centre intends to honour this commitment and respond to this need.

Since its opening in 1998, the Centre has co-ordinated information and public education as well as provided volunteer-based assistance in making or using representation agreements. The Resource Centre is richly endowed with the publications produced by the Representation Agreement Task Group (including the popular *Walking Through a Representa-*

tion Agreement and the *Guidebook to Helping Others Make Representation Agreements*). There are also a variety of "sample" representation agreements that have been made by people over the last four years. Volunteer members of the Centre regularly give workshops to community groups and assistance to individuals.

With the Representation Agreement Act coming into force on February 28, 2000, the Centre will be updating its publications, and redoubling its efforts to inform as many people as possible about the value of representation agreements.

To get in touch with the Representation Agreement Resource Centre, call (604) 875-0188, send a fax to (604) 875-9227 or write c/o 204 - 456 West Broadway, Vancouver, B.C. V5Y 1R3. □



A representation agreement is a way to choose a Representative who will help you make decisions if you need assistance. Your Representative can assist you now or in the future.

About this newsletter

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