
BACKGROUND

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Ministry of Attorney General
and Minister Responsible for Multiculturalism

ADULT GUARDIANSHIP AND PLANNING STATUTES AMENDMENT ACT

Adult Guardianship:

Adult guardianship in British Columbia is currently governed by the Patients Property Act, which is over 40 years old and based on nineteenth century English law.

Highlights of Amendments to Adult Guardianship:

Changes to the Adult Guardianship Act will update the legal framework for adult guardianship and ensure that modern principles of guardianship – autonomy, dignity, and the use of the least intrusive and restrictive approach – apply to court-ordered and statutory guardianship by:

- Enhancing procedural fairness in the statutory guardianship framework, for example, by providing a right of review, increasing the right of participation by the adult and providing clear options for terminating guardianship when it is no longer needed.
- Providing more options to allow guardianship to be tailored to fit an incapable adult's circumstances, such as allowing for temporary guardianship or guardianship that has limited powers or duration, and allowing the public guardian and trustee (PGT)* to transfer statutory guardianship to an adult family member or friend.
- Clarifying the powers and obligations of guardians, including the duty to encourage the adult's involvement in decision making and providing for a new code of practice that will be developed over time to set out best practice guidelines for guardians.
- Requiring applicants for guardianship to provide forward looking guardianship plans in place of the more limited information currently required.
- Facilitating mobility by easing recognition of guardianship orders made elsewhere in Canada.

* The PGT of British Columbia operates under provincial law to protect the legal rights and financial interests of children, to provide assistance to adults who need support for financial and personal decision making, and to administer the estates of deceased and missing persons where there is no one else able to do so.

For more information, see www.trustee.bc.ca or call 604-660-4474.

Personal Planning Documents:

Introduction: The Adult Guardianship and Planning Statutes Amendment Act provides three legal options for adults in British Columbia to set out their wishes for their future, should they become incapable of making their own decisions:

1. Enduring power of attorney
2. Representation agreement
3. Advance directive

Personal Planning Today: Currently there is legislation for two types of personal planning documents in British Columbia to help adults plan for the management of their financial affairs, personal care and health care in the event they become incapable of making these decisions on their own:

- An enduring power of attorney – a power of attorney that remains in effect if a person becomes incapable. It allows the person to appoint another person to make decisions on their behalf about financial affairs, including such complex financial matters as the buying and selling of property.
- A representation agreement – a document that remains in effect if a person becomes incapable. It allows a person to appoint another person to make decisions on their behalf about personal care and/or health care, including such matters as where and with whom they will live, and the health care treatment they will receive.

At this time, a representation agreement can be used to appoint a person to make decisions about personal care and health care, routine financial matters (such as routine banking and bill payment), investments and obtaining legal services. In addition, with legal advice, an enhanced representation agreement can also provide for end-of-life decisions, and cover the same matters that can currently be dealt with under a power of attorney, including the buying and selling of real property. These enhanced agreements, which are broader than limited representation agreements, are sometimes called Section 9 agreements.

- Health-care instructions – although there is not, currently, legislation that expressly recognizes an instrument called an advance directive, adults in British Columbia are already giving advance written instructions in various forms about health care decisions that are intended to speak directly to health care providers without appointing a substitute or proxy decision maker.

Since 2003, the use of these instruments has been authorized in emergency situations. In non-emergency situations, if an adult does not have a guardian (“committee”) or has not appointed a representative under a representation agreement, the health-care provider must obtain a decision about treatment for the adult from a temporary substitute decision maker (usually a family member). The temporary substitute decision maker is required to follow the adult’s instructions.

Personal Planning in the Future Based on Changes to the Current Laws: Based in large measure on the recommendations made in 2002 by UBC law professor emeritus Albert J. McClean respecting personal planning instruments, changes to the legislation would simplify, strengthen and clarify enduring powers of attorney and representation agreements by:

- Continuing limited (i.e. Section 7) representation agreements
- Ending duplication between the enhanced (Section 9) representation agreements and enduring powers of attorney by removing property matters from the scope of enhanced representation agreements
- Making enduring powers of attorney the primary planning tool for property, with added safeguards to protect against financial abuse.

The changes also simplify personal planning documents by making them easier to complete.

In addition, the new law expands the legislative authority for advance written refusals of health care to include non-emergency situations through a new planning option called an advance directive.

- An advance directive – a document that allows capable adults to provide instructions, in advance, refusing health care services if they become incapable of making decisions on their own. Unlike representation agreements, advance directives do not require a substitute decision maker to be appointed.

Representation agreements will continue to be available for adults who prefer to have a substitute decision maker make health care and personal care decisions for them.

Highlights of Amendments to Personal Planning Documents:

- Through advance directives, allows capable adults to provide advance refusal to health care without the involvement of a substitute decision maker.
- Clarifies the test for capacity and confirms that enduring powers of attorney may come into force if the person becomes incapable of making their own decisions.
- Makes enduring powers of attorney the sole planning instrument for major financial decisions.
- Enhances safeguards against financial abuse by clarifying the powers and duties of attorneys.
- Standardizes the execution requirements for enduring powers of attorney and representation agreements that may be entered into by capable adults.
- Reflects the needs of Canada’s increasingly mobile population by enabling the recognition of planning instruments and guardianship orders from other jurisdictions.

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