

Spotlight on Financial Abuse
World Elder Abuse Awareness Day
Event – June 21 2011
Highlights of Bill 29



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Agenda

- Context & background
- Power of Attorney Act
 - New: “Enduring POA” (EPOA)
- Representation Agreement Act amendments
- PGT Act amendments
- Adult Guardianship Act amendments
- Health Care Consent Act
 - Amendments
 - New: Advance Directives
- Next Steps

2

Context – Background

- Original “guardianship” package in 1993
 - Passed but not proclaimed
- Partial proclamation in 2000 – New:
 - Representation Agreements – financial & personal
 - Part 3 Adult Guardianship Act
 - Abuse, Neglect & Self Neglect
 - Investigations, support & assistance
 - Health Care Consent regime
 - Public Guardian & Trustee – new roles
 - Investigation, emergency powers
- See appendix for more details

Context – What is “Bill 29”?

- Another attempt to move forward in 2007:
 - New: revised guardianship regime in AGA
 - Amendments to Part 3 AGA & to PGT Act
 - Improves response to abuse & neglect concerns
 - New: stronger power for attorney legislation (EPOA)
 - Replaces s. 9 Rep Agreements for financial affairs
 - Amendments to Representation Agreement Act (RAA)
 - Amendments to health care consent
 - New: advance directives for health care
 - New: revised care facility admission rules (HCCFAA)

What is NOT coming Sept 1?

- New guardianship regime
 - Parts 2 & 2.1 AGA – not in force
 - Patient’s Property Act and committee ship regime continue
- New care facility admission regime
 - Still no legislation in this area

Enduring Power of Attorney

- Part 1 – POA for agent relationships continue
 - Ends on event or donor’s incapacity
- Part 2 – EPOA
 - POA continues, or starts (springing), when incapable
- Safeguards to help prevent financial abuse:
 - Codifies much of today’s common law
 - 2 witnesses unless BC lawyer or notary (same for RA and AD)
 - Duties & powers clear
 - Court can rectify documents and confirm validity
 - Remedies to deal with misuse, abuse, neglect by attorney
 - Prohibits making of wills
 - Permits beneficiary designations if no change to destination of funds

EPOAs in BC Sept 1 – The Basics

- Test for capability to make EPOA
- EPOA replaces s. 9 RA for financial affairs
- Allows for “springing EPOA”
 - Donor sets criteria
 - Caution: seek advice
- Cannot appoint paid provider of “personal care” or “health care” services or an employee in a facility providing personal care or health care services
 - Exceptions: spouse, child or parent or existing EPOAs
- Effective immediately unless “springing”
 - Attorney cannot act until has signed EPOA

EPOAs – Basics cont’d

- Multiple attorneys permitted
 - Act unanimously unless EPOA provides otherwise
- Clear execution requirements
- Clear rules for termination
- Clarifies attorney’s right to information
- Prohibits making will; rules for beneficiary designations
- Process to recognize comparable EPOAs from:
 - Canadian provinces and
 - US, UK, Australia & New Zealand
- Grandfathers existing EPOAs and s. 9 RAs
 - All attorneys subject to new law
- Non-mandatory forms to be available

EPOAs in BC Sept 1 - Protections

- Duty to keep records
- Cannot be paid unless rate or amount in the EPOA
 - Pre Sept 1 2011 EPOAs permitting payment without rate/amount okay
- No gifts, loans/donations unless in EPOA or within guidelines
- Must act in best interest and rules include:
 - Act honestly & in good faith, and prudently
 - No joint accounts unless joint prior to acting
 - Priority to adult’s personal & health care
 - Not to dispose of assets gifted in adult’s will unless required
 - Must invest according to Trustee Act – Prudent Investor
 - No delegation of decision making except investments

EPOAs – Protections cont'd

- PGT can initiate investigation without a report
- Anyone can report to PGT
 - Donor not capable or undue pressure or fraud or other abuse or neglect induced donor to make, change or revoke EPOA
 - Abuse or neglect by attorney or failure to comply with duties
 - Attorney incapable
 - Protection from liability if not fraudulent or malicious
- PGT must consider report and actions may include:
 - Investigation under PGTA &/or use of emergency powers
 - Refer to Designated Agency
 - Apply to court to rectify an error in signing
- Rules for going to court to resolve issues

Representation Agreement Amendments

- Witnessing and signing requirements streamlined
 - 2 witnesses OR a lawyer or Notary Public in BC for both s. 7 and s. 9
- Cannot appoint paid provider of "personal care" or "health care" services or an employee in a facility providing personal care or health care services
- Removes s. 9 RAs for financial affairs
 - Deems s. 9 RAs for financial to be EPOAs; monitor must continue
 - S. 7 RA for routine financial affairs continues
- Clarifies powers under s. 9 RA for personal & health care and how decisions are to be made

Representation Agreement Amendments cont'd

- Clarifies scope of rep's right to information & duty to keep information confidential
- Cannot require a RA as a condition of services
- Recognition of foreign documents as RAs for health care
- Non-mandatory forms to be available

PGT Act Amendments

- Strengthens PGT ability to protect identity of person who makes a report to PGT
- Clarifies power to investigate if there is no decision maker
 - E.g. self neglect, joint accounts, inappropriate transactions
- Clarifies PGT's right to information
 - includes incapability reports
- Expands emergency powers
 - Today: Can redirect income to PGT to be held in trust
 - Sept 1: Can direct income to be used to protect or maintain the health or safety of an adult

AGA – Abuse, Neglect & Self Neglect

- Part 3 amendments to improve ability to respond:
 - Interim restraining orders for up to 90 days (from 30)
 - service on abuser not required if adult would be put at risk
 - Part 3 assessment of incapability to refuse support and assistance not required if only applying for a longer term restraining order
 - Court ordered support & assistance order for up to one year, and one renewal permitted for up to one year (today: 6 months each)
 - Applies to admissions to a care facility & services from PGT
- Part 4 – new provision:
 - Transfer of property by incapable adult is voidable
 - Replaces s. 20 of Patient's Property Act – transfer is void

Health Care Consent: Advance Directives (AD)

- Advance Directives legally recognized documents
 - Can consent to or refuse treatment without a SDM
 - Clear execution requirements
 - Note: in emergencies known wishes recognized since 2003
- If a SDM exists, AD is a pre-expressed wish for SDM to follow
 - Exception: emergency or rep agreement says Rep not required
- Provides guidance to health care provider on when to use
- Advance Directives cannot be a condition for services
- No forms but watch Ministry of Health materials for Advance Care Planning

Health Care Consent – Amendments

TSDM list today:	TSDM List after Sept 1:
<ul style="list-style-type: none">• Spouse• Child• Parent• Sibling• Anyone related by birth or adoption	<ul style="list-style-type: none">• Spouse• Child• Parent• Sibling• Grandparent• Grandchild• Anyone related by birth or adoption• Close friend• Person immediately related by marriage

Health Care Consent – Amendments

- Clarifies:
 - SDM can consent to withdrawal of treatment
 - adult or decision maker can authorize treatment to stop after it has been started
- Clarifies decision maker's right to information
- Amendment to how TSDM makes decisions:
 - if prior capable wishes not known, consider adult's best interests
 - "best interests" considerations include known beliefs & values
- New: Court process to resolve disputes including
 - voiding an AD or clarifying instructions
 - reviewing a decision by Rep or TSDM, or making a decision

Summary – Expected Impacts

- More access to representation agreements
- More clarity on roles & responsibilities for EPOAs
- More safeguards for EPOAs
- Improved safeguards to deal with abuse, neglect, self neglect
- Enhanced and clarified powers for PGT
- More options for pre-planning health care
- Clearer methods for dealing with health care disputes

Questions

**Appendix A:
Definitions –Adult Guardianship Act**

Abuse
means the deliberate mistreatment of an adult that causes the adult
(a) physical, mental or emotional harm, or
(b) damage to or loss of assets,
and includes intimidation, humiliation, physical assault, sexual assault, overmedication, withholding needed medication, censoring mail, invasion or denial of privacy or denial of access to visitors

Neglect
means any failure to provide necessary care, assistance, guidance or attention to an adult that causes, or is reasonably likely to cause within a short period of time, the adult serious physical, mental or emotional harm or substantial damage to or loss of assets, and includes self neglect.

Self Neglect
means any failure of an adult to take care of himself or herself that causes, or is reasonably likely to cause within a short period of time, serious physical or mental harm or substantial damage to or loss of assets, and includes
(a) living in grossly unsanitary conditions,
(b) suffering from an untreated illness, disease or injury,
(c) suffering from malnutrition to such an extent that, without intervention, the adult's physical or mental health is likely to be severely impaired,
(d) creating a hazardous situation that will likely cause serious physical harm to the adult or others or cause substantial damage to or loss of assets, and
(e) suffering from an illness, disease or injury that results in the adult dealing with his or her assets in a manner that is likely to cause substantial damage to or loss of the assets;

**Appendix B: Adult Guardianship Act
Guiding Principles & Presumption of Capability**

s. 2

(a) all adults are entitled to live in the manner they wish and to accept or refuse support, assistance or protection as long as they do not harm others and they are capable of making decisions about those matters;

(b) all adults should receive the most effective, but the least restrictive and intrusive, form of support, assistance or protection when they are unable to care for themselves or their assets;

(c) the court should not be asked to appoint, and should not appoint, decision makers or guardians unless alternatives, such as the provision of support and assistance, have been tried or carefully considered.

s. 3

(1) Until the contrary is demonstrated, every adult is presumed to be capable of making decisions about personal care, health care, legal matters or about the adult's financial affairs, business or assets.

(2) An adult's way of communicating with others is not grounds for deciding that he or she is incapable of making decisions about anything referred to in subsection (1).

21

Appendix C: Related Legislation to be aware of

- **Hospital Act**
 - S. 4.1 was new July 2010
 - Prohibits
 - employees from persuading or inducing a patient to make a gift or change will or provide a benefit to the employee or spouse, relative or friend
 - requiring payment or donation as requirement for admission
 - acting as a personal representative (executor)
 - And gifts under will are void
 - making appointment as attorney or rep,
 - dispositions under the power are void (Some exceptions)
 - The PGT can approve certain gifts under will or benefits under POA
 - After Sept 1, PGT it cannot consent to appointment of attorney or representative
- **Community Care & Assisted Living Act**
 - S. 18 amendments in July 2010 – has similar rules to Hospital Act and will have similar changes Sept 1
