

CHAPTER FIFTEEN: GUARDIANSHIP

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CHAPTER FIFTEEN: GUARDIANSHIP – POWER OF ATTORNEY, REPRESENTATIVE AGREEMENTS AND COMMITTEESHIP

I. GOVERNING LEGISLATION AND RESOURCES

Governing Legislation

Adult Guardianship Act, R.S.B.C. 1996, c. 6 [AGA].

Business Corporations Act, S.B.C. 2002, c. 57, ss. 386-396 [BCA].

Evidence Act, R.S.B.C. 1996, c. 124 [EA].

Family Relations Act, R.S.B.C. 1996, c. 128 [FRA].

Health Care (Consent) and Care Facility (Admission) Act, R.S.B.C. 1996, c. 181 [HCCCFCA].

Land Title Act, R.S.B.C. 1996, c. 250, ss. 45, 51-57, 283(2) [LTA].

Mental Health Act, R.S.B.C. 1996, c. 288 [MHA].

Patients Property Act, R.S.B.C. 1996, c. 349 [PPA].

Power of Attorney Act, R.S.B.C. 1996, c. 370 [PAA].

Property Law Act, R.S.B.C. 1996, c. 377, ss. 16, 26-7 [PLA].

Public Guardian and Trustee Act, R.S.B.C. 1996, c. 383 [PGTA].

Representative Agreement Act, R.S.B.C. 1996, c. 405 [RAA].

Wills Act, R.S.B.C. 1996, c. 489 [WA].

Secondary Sources of Law

CLE Wills Precedent, Continuing Legal Education Society of British Columbia, 2005.

Adult Guardianship Update, Continuing Legal Education Society of British Columbia, 2005.

O'Brien's Encyclopaedia of Forms, 11th ed. V. I., c. 45, 1988.

- a) This chapter is a good reference for examples of specific clauses one could include in a Power of Attorney document.
- b) The document may be accessed online through our Law library website at:
<http://toby.library.ubc.ca/resources/infopage.cfm?id=1146>

Enduring Powers of Attorney: Areas for Reform, Western Canada Law Reform Agencies, 2004.

Review of Representative Agreements and Enduring Powers of Attorney Undertaken for the Attorney General of the Province of British Columbia, A. J. McClean, 2002.

Adult Guardianship and Elder law issues, Continuing Legal Education Society of British Columbia, 2005.

Take Charge - It's Your Life! (Make a Representative Agreement), The Representative Agreement Resource Centre & The People's Law School, Vancouver, March 2000.

Vanguard – A project examining inter-agency protocols for capacity and vulnerability in B.C. Visit the CCEL website under “Projects” and “Publications” for more information (www.bcli.org/ccel).

Resources

B.C. Centre for Elder Advocacy and Support (BCCEAS)

411 Dunsmuir Street
Vancouver, B.C. V6B 1X4

Toll Free: 1-866-437-1940
Telephone: (604) 437-1940
Fax: (604) 437-1929
Website: www.bcceas.ca
Email: info@bcceas.ca

- BCCEAS is a provincial organization dedicated to providing legal information on issues related to older adults and the law, particularly issues involving abuse, Powers of Attorney, Representative Agreements and consumer fraud. BCCEAS also staffs an Elder Law clinic that provides free legal services to older adults who would not otherwise be able to access justice due to low income or other barriers which prevent them from finding legal help.

Canadian Center for Elder Law (CCEL)

Annex 1 - Faculty of Law
1822 East Mall
Vancouver, B.C. V6T 1Z1

Telephone: (604) 822-0142
Fax: (604) 822-0144
Website: [ww.bcli.org/ccel](http://www.bcli.org/ccel)
E-mail: lwatts@bcli.org

- CCEL is a national non-profit that conducts legal research, law reform, outreach and public education on the law as it relates to older adults. The Centre has produced a number of practical tools and guidance for legal professionals, financial service providers, social workers, health care workers, caregivers, advocates, volunteers and the public.

B.C. Association of Community Response Networks

Website: www.bccrns.ca

- CRNs are located throughout BC and provide essential support for adults who are experiencing abuse, neglect and self-neglect and are in need of support or assistance to protect themselves. CRNs may provide access to resources.

Vancouver Coastal Health – Re: Act

Corporate Office
11th Floor, 601 West Broadway
Vancouver, B.C. V5Z 4C2

Toll Free: 1-877-REACT-99
Telephone: (604) 984-5958
Website: www.vchreact.ca

- Vancouver Coastal Health is a Designated Agency that provides educational materials to help health care providers recognize and respond to abuse, neglect and self-neglect of vulnerable adults.

Nidus Personal Planning Resource Centre and Registry

411 Dunsmuir Street
Vancouver B.C. V6B 1X4

Telephone: (604) 408-7414
Website: www.nidus.ca

- Nidus provides a registry for Representative Agreements and Enduring Powers of Attorney.

Public Guardian and Trustee of B.C.

700 - 808 West Hastings Street
Vancouver, B.C. V6C 3L3

Telephone: (604) 660-4444
Website: www.trustee.bc.ca

- The PGT provides advice and publications on various aspects of adult guardianship and can conduct investigations where there are concerns of financial abuse, neglect or self-neglect. In some situations, the PGT may agree to act as an Attorney.

Designated Agencies

In British Columbia, anyone can make a report to a Designated Agency or the PGT where there are concerns that an adult is experiencing abuse, neglect or self-neglect and needs support or assistance to protect themselves. For more information about the statutory role of Designated Agencies and the PGT, refer to section **VI: Abuse and Neglect**, below.

Also refer to the [Practical Guide to Abuse and Neglect Law in Canada](http://www.bcli.org/ccel/projects/practical-guide-elder-abuse-and-neglect-law-canada) for a summary of the law and practical guidelines of how to identify and respond to situations of abuse or neglect. This guide is produced by the Canadian Centre for Elder Law and available online at: <http://www.bcli.org/ccel/projects/practical-guide-elder-abuse-and-neglect-law-canada>.

Community Living BC
Toll Free: 1-877-660-2522
Website: <http://www.communitylivingbc.ca/>

Vancouver Coastal Health Authority
Phone: 604-736-2033
Toll Free: 1-866-884-0888
Website: <http://vchreact.ca/report.htm>

Fraser Health Authority
Phone: 604-587-4600
Website: http://www.fraserhealth.ca/your_care/adult_abuse_and_neglect

Vancouver Island Health Authority
Phone: 250-370-8699
Website: <http://www.viha.ca/>

Interior Health Authority
Phone: 250-862-4200
Website: <http://www.interiorhealth.ca/>

Northern Health Authority
Phone: 250-565-2649
Website: <http://www.northernhealth.ca/>

Public Guardian and Trustee of British Columbia (PGT)
Toll Free: 1-800-663-7867
Phone: 604-660-4444
Website: <http://www.trustee.bc.ca>

Websites

- www.bcli.org/ccel – The Canadian Centre for Elder Law
- www.trustee.bc.ca – The Public Guardian and Trustee
- www.nidus.ca – Nidus Personal Planning Resource Centre and Registry

- www.cle.bc.ca – The Continuing Legal Education Society of B.C.
- www.bcli.org – The B.C. Law Institute
- www.bcceas.ca – B.C. Centre for Elder Advocacy and Support
- www.bccrns.ca – B.C. Association of Community Response Networks
- www.vchreact.ca -- Vancouver Coastal Health Re: Act

II. INTRODUCTION TO ADULT GUARDIANSHIP

Adult guardianship laws are applicable to adults over the age of 19. There are four key areas of the law, concerning adult guardianship or substitute decision-making:

1. **Mental Capacity:** the law presumes that an adult is capable of making decisions and provides several statutory tests for determining incapacity.
2. **Advance Planning Documents:** the law allows a capable adult to appoint a substitute decision-maker and to specify his or her wishes for financial and health care decisions in three types of legal documents: Power of Attorney (for financial decisions only); Representation Agreement (for health care consent and limited financial decision-making); and Advance Directives (for health care consent).
3. **Appointed Guardianship:** where an adult is incapable and does not have Advance Planning Documents in place, the court may appoint a guardian (called a Committee or Committee of Person) to act on behalf of an incapable adult.
4. **Abuse and Neglect:** the law has established a reporting system for Designated Agencies to respond when older adults experience abuse, neglect or self-neglect and need support and assistance to protect themselves from further harm.

In each of these areas of the law, it is crucial that substitute decision-makers, court-appointed guardians, legal and financial advisors, social workers and health care providers consult with the adult to determine how to act in accordance with his or her wishes, values and beliefs. Substitute decision-maker(s) and guardian(s) are legally obligated to act according to the wishes, values and beliefs of the adult who appoints them or is need of a guardian.

NOTE: B.C. legislation concerning adult guardianship is in a transitional period. The legislature has passed the Adult Guardianship Act [AGA], as amended by the Adult Guardianship and Planning Statutes Amendment Act. As of September 1, 2011, many of the changes to the AGA (i.e. laws concerning Advance Planning Documents) will be in effect. New laws concerning statutory and court-appointed guardianship are not yet coming into force. Instead, the Patients Property Act [PPA] remains in effect, until further notice from the provincial government.

III. MENTAL CAPACITY

NOTE: For the purposes of this manual, there is no distinction between “mental capacity”, “capacity” and “capability”.

In British Columbia, the law presumes that an adult has the ability to make personal and legal decisions (e.g. decisions regarding health, life, property, assets, financial arrangements, etc.), unless there is evidence to the contrary. A person may become incapable at a point in his or her life due to illness, disability or accident. If an adult is, or becomes incapable, another person (or persons) can become the substitute decision-maker(s), who

acts on the wishes and values of the incapable adult. A substitute decision-maker can be appointed in either of the following ways:

1. A capable adult can name the substitute decision-maker(s) in an Advance Planning Document (e.g. in a Power of Attorney, a Representative Agreement, or an Advance Directive); or
2. An adult who is longer capable of making financial or health care decisions, and does not have valid Advance Planning Documents in place, may have a guardian (called a Committee or Committee of Person) appointed by the courts (or by statute) to make decisions.

An adult who has drafted a Power of Attorney, Representation Agreement or Advance Directive, could maintain mental capacity to make financial and health care decisions, throughout their life. An adult with capacity retains the right to make decisions about legal, financial and health care matters, after these legal documents are made. Also, the appointed substitute decision-maker has a legal duty to act in accordance with the adult's instructions, values, wishes and beliefs, regardless of capacity.

The appropriate test for incapacity will vary, depending on the particular decision being made. Below is a description of the statutory tests for incapacity, as found in the relevant legislation. In most cases, Advance Planning Documents will specify what is required to determine incapacity (e.g. medical opinion from two medical professionals). In cases where no substitute decision-maker has been named while the adult is capable, the court will decide whether there is evidence of incapacity, based on these various statutory tests. After an adult becomes incapable, the substitute decision-maker must continue to act on the incapable adult's previous instructions and known values, wishes and beliefs.

Financial Decisions - Power of Attorney (POA)

As mentioned above, an adult is presumed to have capacity, unless proven otherwise. According to s.11 of the amended Power of Attorney Act [PAA], an adult is presumed capable of making decisions about financial affairs and understanding the nature and consequences of making, changing or revoking a POA.

Difficulties or barriers in communicating are not adequate grounds for determining that an adult is incapable. Instead, incapacity is determined by a more thorough assessment, either as specified in Advance Planning Documents (i.e. a Springing POA will normally specify under what conditions a person is considered incapable, such as on the basis of medical opinions from two doctors or by an assessment of the court.

The PAA sets out a specific statutory test of incapacity in s.12, which reaffirms that an adult is presumed able to make an Enduring Power of Attorney (EPOA), unless there is evidence that the adult is unable to understand the nature and consequences of the EPOA. According to s.12(2), an adult is considered incapable of understanding the nature and consequences of an EPOA if the adult cannot understand all of the following:

- the property the adult has and its approximate value;
- the obligations the adult owes to his or her dependants;
- that the adult's attorney will be able to do on the adult's behalf anything in respect of the adult's financial affairs that the adult could do if capable, except make a will, subject to the conditions and restrictions set out in the power of attorney;
- that, unless the attorney manages the adult's business and property prudently, their value may decline;
- that the attorney might misuse the attorney's authority;
- that the adult may, if capable, revoke the enduring power of attorney; and
- any other prescribed matter.

If an adult is incapable of making financial decisions and there is no Power of Attorney in place, then the courts will normally appoint a guardian (called a Committee) to make financial decisions on behalf of the adult. For more information, refer to section **IV.A.8: No Power of Attorney and No Capacity** and section **V: Reactive/Court Appointed Guardianship** in this chapter.

NOTE: This is a difficult and rapidly changing area of the law. This above statutory test for incapacity in s.12(2) of the PAA will come into effect on September 1, 2011. This test is significantly broad in scope and appears to only apply to an EPOA. However, it remains to be seen how this test will be interpreted by the courts. Consult your supervising lawyer for guidance on assessing capacity for other types of Powers of Attorney, or if there is a greater need for clarity about the validity of these documents.

Health Care Consent

The Health Care (Consent) and Care Facility (Admission) Act [HCCFA] states that every adult who is capable of giving or refusing consent to health care has the right to (s.4):

- give consent or to refuse consent on any grounds, including moral or religious grounds, even if the refusal will result in death;
- select a particular form of available health care on any grounds, including moral or religious grounds;
- revoke consent;
- expect that a decision to give, refuse or revoke consent will be respected; and
- be involved to the greatest degree possible in all case planning and decision making.

According to s.3 of the HCCFA, an adult is presumed capable, unless proven otherwise, when:

- giving, refusing or revoking consent to health care; and
- applying for admission to a care facility, accepting a facility care proposal, or moving out of a care facility.

Difficulties or barriers in communicating are not adequate grounds for deciding that an adult is incapable. Instead, incapacity is determined in accordance with s.7 of the HCCFA, which requires a health care provider to decide whether or not the adult understands the information given by the health care provider and that the information applies to the situation of the adult in need of health care.

If a person is determined to be incapable, then the health care provider will need to obtain consent from another adult, who is able to give or refuse consent on behalf of the incapable adult. The health care provider can get consent from a substitute decision-maker named in a Representative Agreement or an Advance Directive. If neither of these documents are in place, and there is no appointed guardian (called a Committee of Person), then the health care provider will need to get consent from a Temporary Substitute Decision-maker (TSDM). The HCCFA provides a hierarchical, default list of TSDMs, as follows (s.16):

- spouse/partner
- adult child (over 19 years old)
- parent
- brother or sister
- grandparent
- grandchild
- other relatives by birth or adoption (not in-laws or step-children)
- close friend
- person immediately related by marriage (includes in-laws or step-children)

A TSDM has authority to decide whether to give or refuse consent, in accordance with the adult patient's wishes, values and beliefs. This authority of a TSDM to give or refuse consent is generally valid for 21 days, but the time period may be extended upon written confirmation by the health care provider. If the health care provider has reasonable grounds to believe that the adult patient may be capable, then the health care provider must again determine whether the adult is incapable. Further, if an adult patient becomes capable again during this time period, then consent must be given or refused by the adult patient. For more information, refer to section **B.7.a: Temporary Substitute Decision-maker (TSDM)** in this chapter below.

Representation Agreement (RA)

A capable adult may wish to provide health care instructions in advance by making a Representation Agreement (RA), which is a legally-binding document that appoints a substitute decision-maker and provide instructions with respect to health care decisions and some (limited) routine financial decisions.

In British Columbia, an adult is presumed to have capacity, unless proven otherwise. According to s. 3(1) of the Representative Agreement Act [RAA], an adult is presumed to have capacity to:

- decide to make, change or revoke a s. 7 or s. 9 RA
- choose personal care, health care and legal matters
- conduct the routine management of their own financial affairs

The statutory test to determine incapacity is set out in s. 8 of the RAA. An adult may be considered incapable of making a RA where the adult fails to meet all of these factors:

- communicates a desire to have a Representative make, help make or stop making decisions
- demonstrates choices and preferences and can express feelings of approval or disapproval of others
- is aware that making the representation agreement or changing or revoking any of the provisions means that the Representative may make, or stop making, decisions or choices that affect the adult
- has a relationship with the Representative that is characterized by trust.

An adult who has diminished capacity may still be allowed to make, change or revoke a s. 7 RA, even when the adult is incapable of:

- making a contract
- managing his or her health care , personal care or legal matters
- the routine management of his or her financial affairs.

For more information and an explanation of the differences between a s.7 RA and a s.9 RA, refer to section **IV. B. 2: Types of Representation Agreements** in this chapter.

Advance Directive (AD)

A capable adult may also choose to make an Advance Directive (AD), which is a legally-binding document that provides instructions with respect to giving or refusing consent.

In British Columbia, an adult is presumed to have capacity, unless proven otherwise. According to s.19.1 of the Health Care (Consent) and Care Facility (Admission) Act [HCCFA], an adult is presumed to have capacity to make an AD, unless there is evidence that he or she is incapable of understanding the nature and consequences of the AD.

An adult is incapable of understanding the nature and consequences of an AD, if the adult cannot understand:

- the scope and effect of the health care instructions set out in the AD; and
- that a temporary substitute decision-maker (TSDM) may not be chosen by the health care provider.

For more information about the requirements and scope of ADs, refer to section **IV. C: Advance Directives** in this chapter.

NOTE: This is a difficult and rapidly changing area of the law. Although previously used by many health care providers, an AD will only become **legally binding** on and after September 1, 2011. Consult your supervising lawyer for guidance on assessing capacity to make an RA or AD, or if there is a greater need for clarity about the legal validity of these documents.

Designated Agencies – Support and Assistance

Another area where the issue of capacity may be raised is when an adult is experiencing abuse, neglect or self-neglect. Under Part 3 of the Adult Guardianship Act [AGA], anyone can make a report to a Designated Agency who will meet with the adult, investigate whether or not the adult is experiencing abuse, neglect or self-neglect and, if necessary, establish a support and assistance plan to protect themselves.

An adult who is need of support and assistance does **not** necessarily lack mental capacity. In fact, according to s. 3(1) of the AGA, an adult is presumed to be capable of making decisions about personal care, health care and financial affairs, regardless of whether the adult is vulnerable to abuse, neglect or self-neglect.

A way of communicating with others is not grounds for determining that an adult is incapable. Instead, the statutory tests of incapacity apply. For applications concerning guardianship, a formal assessment of capacity must be done in accordance with the Adult Guardianship (Abuse and Neglect) Regulations [AGR]. According to s.3(4) of the AGR, a capacity assessor must base the decision of incapacity on whether the adult understands:

- the services described in the support and assistance plan
- why the services are being offered to the adult, and
- the consequences of not accepting the services.

The AGA clearly states that the adult who is in need of support and assistance must be involved in decisions about how to seek and provide whatever support and assistance is needed to prevent abuse or neglect. It is also important to remember that an adult with capacity has the legal right to refuse support or assistance. For more information about this process, refer to section **VI: Abuse and Neglect** in this chapter.

IV. ADVANCE PLANNING DOCUMENTS

An adult who has mental capacity can execute various documents to appoint another person to make financial and health care decisions on his or her behalf. These documents may come into effect immediately, or only when certain events come to pass (e.g. upon loss of capacity), as follows:

- **Power of Attorney (POA):** an adult (called the Donor) with capacity may choose to appoint another person (called the Attorney) to act on his or her behalf, **only** in matters concerning financial affairs (e.g. property, finance, banking, business, etc).
- **Representative Agreement (RA):** an adult with capacity may choose to appoint another person (called a Representative) to act as a substitute decision-maker to act on his or her behalf with respect to health or personal matters (and some limited financial decisions, under a s.7 RA).
- **Advance Directive (AD):** an adult with capacity may choose to give or refuse consent to health care or give health care instructions in an AD, which will only come into effect when the adult is incapable and in need of health care.

In British Columbia, various laws define what is required to validly execute each of these documents, the duties and powers held by the appropriate substitute decision-maker(s) and the legal authority or scope of decisions made.

Power of Attorney

A Power of Attorney (POA) is a legally-binding document that allows a capable adult (called the Donor) to grant the authority to other capable adult(s) (called the Attorney(s)) to make financial and legal decisions on their behalf. POAs can vary in scope, depending on the:

- specific needs of the Donor
- types of decisions an Attorney is permitted to make
- time period (i.e. ongoing or set for a limited period)
- how many Attorneys are appointed
- need for unanimous decisions or task-specific roles

A Donor can make very individualized and specific provisions in a POA. For example, a Donor can make a POA that is intentionally broad in scope, allowing the Attorney(s) to handle all financial decisions on behalf of the Donor. Alternatively, a POA can be very narrow in scope, allowing the Attorney(s) to do one specific act (e.g. cashing a pension cheque, transferring property, or paying insurance).

Students should confer with their supervising lawyer if there is any doubt that the client understands and appreciates the nature and consequences of a POA. Also note that an adult should not be required to have a POA as a condition of receiving any good or service.

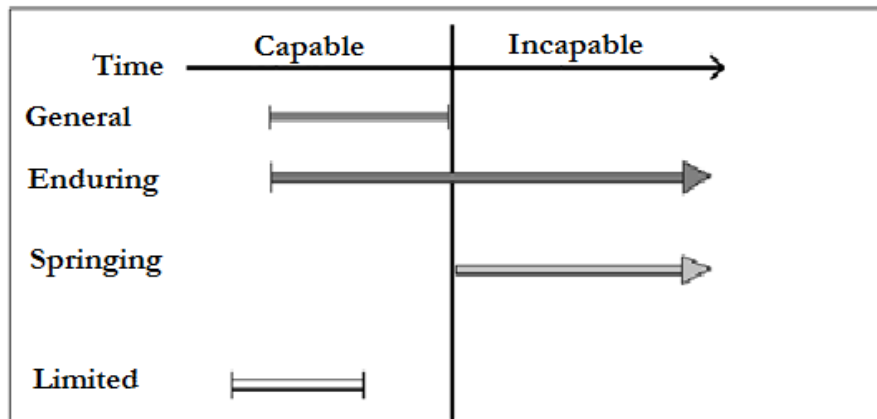
The remainder of this section explains in more detail what type of POAs can be made; who is involved in a POA; how a POA can be made, changed, or revoked; the duties and powers of an Attorney; and what can be done if an adult is incapable and does not have a valid POA in place.

V. TYPES OF POAS

There are four types of POAs. It is important to find out what type of POA would best suit the client's needs. Questions to ask include:

- What does the Donor want?
- When does the Donor want the Attorney to begin to act?
- Does the Donor want the POA be used for a limited time only?
- Does the Donor want the POA to be in effect when he or she becomes incapable?
- How will incapacity be decided?

The four types of POA can be conceptualized graphically as follows:



- **General:** effective immediately and ongoing until loss of capacity, revocation or death
- **Enduring:** effective immediately and ongoing until revocation or death

- **Springing:** dormant until a future date or event (i.e. the loss of capacity) and ends only upon death (must define a “triggering event” for when the POA comes into effect)
- **Limited:** effective only during a specified time period and for a specific purpose (e.g. payment of insurance premiums or payment of bills)

In most cases, the POA will be effective immediately, once signed and witnessed by the Donor and Attorney(s), and will continue on an ongoing basis. The most common POA is the Enduring Power of Attorney (EPOA), which allows the Attorney to act while the Donor is capable and **continues** when/if the Donor becomes incapable. General POAs are rarely used, as they become **no longer in effect** when an adult becomes incapable (which is often when a POA is most needed).

Some types of POAs will come into effect or terminate upon the occurrence of specific events. For example, where a Springing or Limited POA are made, the Attorney may not need to act until a certain “triggering event” or date is reached.

VI. WHO IS INVOLVED IN A POWER OF ATTORNEY?

Every POA must be made by a capable adult (called a Donor) and at least one person who acts as an Attorney. The Donor may name multiple or alternate Attorneys. In some situations, the PGT can be appointed as the Attorney, particularly where an adult does not have family or friends who can act on their behalf.

The PGT may also become involved where there is financial abuse, neglect or self-neglect, particularly if there are concerns that an Attorney is misusing a POA or concerns that an Attorney is failing to fulfill their legal duties.

To follow is a brief description of how a Donor, Attorney(s) and the PGT are involved in a POA. For more detailed information about the mental capacity of a Donor, refer to section **III.A: Mental Capacity; Financial Decisions – Power of Attorney**, above. For more detailed information about the statutory duties and powers of an Attorney, refer to section **IV.A.6: Acting as an Attorney** in this chapter. For more information about reporting abuse or neglect to the PGT, refer to section **VI: Abuse and Neglect** in this chapter.

a) Donor

A Donor is any adult who makes a POA to appoint another adult (called an Attorney) to make financial decisions on his or her behalf. A Donor must be:

- an adult (i.e. at least 19 years of age);
- mentally capable to make a POA; and
- acting voluntarily, or on their own.

A Donor must have mental capacity at the time that the POA is signed, understanding the nature and implications of a Power of Attorney. An adult who has mental capacity has the legal right to make decisions, including the legal right to choose whether to:

- determine the type, scope or purpose of the POA;
- define the roles and authority of the appointed Attorney(s);
- provide instructions to the Attorney(s);
- express wishes, values and beliefs; and
- change or revoke a POA.

For more information on assessment of mental capacity to make a POA, refer to the **III.A. Mental Capacity for Financial Decisions – Power of Attorney**, in this chapter.

b) Attorney(s)

An Attorney is an adult who is capable and willing to carry out the financial tasks and/or make financial decisions on behalf of another person (the Donor). An Attorney must be:

- an adult (i.e. at least 19 years of age);
- mentally capable to carry out the financial tasks;
- able to understand and fulfill their legal duties;
- able and willing to act in accordance with the instructions, wishes, values and beliefs of the Donor; and
- acting voluntarily, or on their own.

The “Attorney” in a POA does **not** need to be a lawyer. However, in some circumstances the Donor may wish to appoint his or her lawyer to act as an Attorney.

More than one person can act as an Attorney. According to s. 18(5) of the PAA, where a Donor appoints multiple Attorneys, the Attorneys must act unanimously in exercising their authority. The exception to this unanimous decision-making rule is where the Donor specifically does the following in the POA:

- describes circumstances where the Attorneys do not have to act unanimously;
- sets out how a conflict between Attorneys is to be resolved; or
- authorizes an Attorney to act only as an alternate .

Where a POA appoints two or more attorneys to act for a Donor, all the Attorneys will need to be in agreement regarding decisions made for the donor, **unless otherwise specified in the POA**. A Donor might prefer to define distinct roles for each Attorney (i.e. appoint one adult as the Attorney for certain transactions (e.g. personal banking) and a second individual as their attorney over different matters (e.g. property). The POA should be clear about the roles and responsibilities of each Attorney and whether or not unanimous consent is necessary in each type of transaction.

Appointing more than one person has potential advantages and disadvantages. It can reduce the potential for an Attorney to misuse his or her power. But, it may make the decision-making process complicated and inefficient. For more detailed information about the statutory duties and powers of an Attorney, refer to section **IV.A.6: Acting as an Attorney** in this chapter.

NOTE: As of September 1, 2011, a signature by the Attorney(s) on the POA is required to signify acceptance of the role and responsibility. If an Attorney is not willing to accept this role, then the Attorney should not sign the POA.

c) The Public Guardian and Trustee (PGT)

An adult who does not have relatives or friends who are willing and able to serve as an Attorney may ask the Public Guardian and Trustee (PGT) to act as an Attorney. According to s.6(c) of the Adult Guardianship Act [AGA], the PGT may agree to act as Attorney. If a client needs to appoint the PGT as Attorney, then contact the PGT to arrange a meeting.

Another circumstance where the PGT may become involved is where an Attorney is misusing a POA or otherwise failing to fulfill their legal obligations. Any person may notify the PGT if there is a reason to believe that fraud, undue pressure or some other form of abuse or neglect is being or was used to induce an adult to make, change or revoke financial or legal document. Any person may also notify the PGT where an Attorney is:

- incapable of acting as Representative
- abusing or neglecting the adult
- failing to follow the instructions in the POA

- otherwise failing to comply with legal duties of an Attorney

For more information about the role of the PGT where there is financial abuse, neglect or self-neglect, refer to section **VI: Abuse and Neglect** in this chapter.

VII. CREATING A POWER OF ATTORNEY

The requirements for creating a POA are relatively simple. The most important aspect of drafting a POA is to ensure that the document accurately reflects the Donor's specific wishes. Questions to ask include:

- What does the client want to do?
- Does the client have capacity to make this POA?
- Does the client understand the nature of this POA?
- Does the client understand the potential legal impact of this POA?
- Has the client received suitable independent legal advice?
- What type of authority does the Attorney need?
- Does the Donor want to limit the Attorney's authority?
- When should the POA be in effect (i.e. ongoing or limited?)

Any adult can draft a POA. However, it is advised that an adult consult a lawyer or notary prior to finalizing a POA. Independent legal advice will help ensure that the POA only grants an Attorney the powers and authority that the Donor wants to give.

An adult with capacity must be free to choose – or not to choose – to sign a POA. It is important to be aware of situations where a person may be putting undue pressure (including physical, financial or emotional threats, manipulation or coercion). For more information, refer to section **III.A: Mental Capacity** and section **VI: Abuse and Neglect** in this chapter.

a) Formalities

Formalities are the specific requirements for a POA to be considered valid (i.e. whether the POA has to be signed or witnessed). According to s.16 and s. 17 of the Power of Attorney Act [PAA], an enduring POA must be:

- in writing;
- signed and dated by the Donor in the presence of two witnesses (unless one witness is a lawyer or a notary); and
- signed and dated by the Attorney(s) who agree to act in the presence of two witnesses (unless one witness is a lawyer or a notary).

A new POA will need to be signed by both the Donor and the Attorney(s). These signatures do not need to be in each others' presence. In other words, the Attorney and Donor may sign the document separately. However, these signatures must be witnessed by two capable adults (unless one witness is a lawyer or notary).

As of September 1, 2011, An Attorney must sign an EPOA before exercising their authority. If a person who is named as an Attorney does not sign the POA, then the person is **not required or legally able** to act as an Attorney. If a person named as Attorney does not sign, the authority of any other named Attorney is not affected (unless the POA states otherwise).

According to s.16(6), the following persons must **not** act as a witness to the signing of an EPOA:

- a person named as an Attorney;
- a spouse, child or parent of a person named as an Attorney;

- an employee or agent of a person named as an Attorney, unless the person named as an Attorney is a lawyer, a notary, the Public Guardian or Trustee or a financial institution authorized to carry on trust business under the Financial Institutions Act;
- a person who is not at least 19 years of age; or
- a person who does not understand the type of communication used by the Donor (unless interpretive assistance is used).

The Power of Attorney Act [PAA] provides a standard form that can be used to create a POA. The most up-to-date version of this form should also be posted on the government website: www.bclaws.ca.

LSLAP also has its own standard POA form, which can be altered to suit the Donor's needs. For a list of optional clauses that can be added in appropriate circumstances, refer to **Appendix H: Special Power of Attorney Clauses** in this chapter.

Although there is no legal requirement to register a POA, an EPOA can be registered through the Nidus e-Registry. More information about this service is available on their website: <http://www.nidus.ca>.

b) Land Transactions

A Donor might authorize the Attorney(s) to make a transaction involving land (i.e. transfer of title, closure of sale of property, etc.) on behalf of the Donor. If the authority of an Attorney involves transactions concerning land and land title, then the POA must be executed and witnessed in accordance with the Land Title Act [LTA].

A POA that grants authority to the Attorney to make land transactions will expire after **3 years** of its execution. There is an exception to this where a Donor signs an EPOA, or the POA expressly exempts itself from these provisions.

A POA that confers the power to deal with land transactions and registration of land titles must be witnessed and notarized by a lawyer. This is because POAs that involve land transactions require more care and consultation to ensure that the Donor is aware of the legal impact of conveying this authority to the Attorney(s). For more information about the capacity of a Donor to understand the nature and consequences of a POA, refer to section **III.A: Mental Capacity – Financial Decisions** in this chapter.

c) Banks, Credit Unions and Other Financial Service Providers

Financial institutions and agents (e.g. banks, credit unions, investment advisors, customer service Representatives, estate planners, etc.) may ask your client to complete their institution's POA. This normally occurs where – for example – a Donor wishes to grant the Attorney access to bank accounts for the purpose of paying bills, making transfers, etc. The financial institution may request that the Donor and Attorney fill out their institution's Limited POA. If the client signs an institution's POA, this can sometimes create a conflict between POAs. These important questions should be asked:

- What does the client want to do?
- What kind of POA should apply?
- Is the financial institution's form suitable?
- Has the client received suitable independent legal advice?

A client should **not** sign a POA form without seeking legal advice. The client must also be made aware of the legal effect of signing, such as the possible revocation of a previous POA. Examples of suitable forms are available in **Appendix B** and **Appendix G** in this chapter.

NOTE: It is good practice for the client to notify financial institutions and agents that a new POA has been made and/or that the previous POA has been revoked. This can be done in writing, with a copy of the new POA.

VIII. OTHER JURISDICTIONS

As of September 1, 2011, Enduring POAs (EPOAs) that have been made in some jurisdictions outside of BC, elsewhere in Canada or in some other countries (e.g. United States, United Kingdom, Australia and New Zealand) may be recognized as legally valid in BC. This new provision is set out in s. 38 of the PAA, and subject to the Power of Attorney Regulation [PAR].

Extrajurisdictional EPOAs must be certified. Section 4(3) of the PAR currently requires that the EPOA from another jurisdiction must be accompanied with a certificate, which is from a solicitor who is permitted to practice in the jurisdiction where the EPOA was made. The certificate must indicate that the EPOA meets the requirements set out in s.2(a) to (c) of the PAR.

According to s. 4(2)(a) to (c) of the PAR, a POA from outside BC will be deemed a valid EPOA in BC where it:

- grants authority to an Attorney that comes into effect or continues to have effect while an adult is incapable of making decisions about his or her own affairs;
- was made by a person who was, at the time of its making, ordinarily resides elsewhere in Canada or in the United States, the United Kingdom, Australia or New Zealand; and
- is in accordance with the laws and continues to have legal effect in the jurisdiction in which it was made.

An Attorney and the Donor must both be at least 19 years of age before the Attorney can exercise any powers or perform any duties.

IX. ACTING AS AN ATTORNEY

Below is a description of the various duties and powers held by an Attorney. In most POAs, the Attorney(s) will immediately be able to act on behalf of the Donor. However, in some types of POAs (e.g. a Springing or Limited) the terms of the POA will specify a “triggering event” or date that will signify when an Attorney has the authority to act on the Donor’s behalf. Regardless of when an Attorney is permitted to act, the following duties and powers apply.

a) Duties

The primary responsibility of an Attorney is to act in accordance with the Donor’s instructions, wishes, beliefs and values. The Power of Attorney Act [PAA] explicitly sets out a number of statutory duties and powers. According to s. 19(1) of the PAA, an Attorney must:

- act honestly and in good faith;
- exercise the care, diligence and skill of a reasonably prudent person;
- act within the authority given in the POA; and

- keep prescribed records and produce these records for inspection and copying upon request.

An attorney must act in the Donor's best interest, taking into account the Donor's current wishes, known beliefs and values and explicit directions in the POA. Where reasonable, an Attorney must give priority to meeting the personal care and health care needs of the adult, foster the independence of the Donor, and encourage the Donor's involvement in any decision-making.

Concerning the Donor's personal property and real property, an Attorney must keep the Donor's property separate from his or her own property; unless, the property is jointly owned by the Donor and the Attorney as joint tenants or has been substituted for, or derived from property owned as joint tenants. An Attorney must also:

- only make investments in accordance with the Trustee Act [TA];
- **not** dispose of property that is subject to a Donor's will; and
- keep the Donor's personal effects at the disposal of the Donor.

If an EPOA explicitly says that an Attorney will be exempt from these provisions, then the Attorney is not legally obligated to fulfill these duties.

b) Powers

A Donor may grant general or specific powers to an Attorney in a POA. An Attorney may also be permitted to exercise statutory powers to act on behalf of the Donor. According to s. 20 of the PAA, an Attorney named has the statutory power to:

- make a gift or loan, or charitable gift
- receive a gift or loan
- retain the services of a qualified person to assist the Attorney
- change or make a beneficiary designation

The scope of an Attorney's powers can be limited or expanded in the express wording of a POA. An Attorney is **exercising authority improperly** if the Attorney acts when the authority of the Attorney is suspended or has ended; or the EPOA is not in effect, is suspended, terminated or invalid.

c) Gifts, Loans and Charitable Donations

An Attorney may make a gift or loan, or a charitable gift from the Donor's property if the EPOA permits the Attorney to do so, or if:

- the Donor will have sufficient property remaining to meet the personal care and health care needs of themselves and their dependents and to satisfy other legal obligations
- the Donor, when capable, made gifts or loans or charitable gifts of that nature; and
- the total value of all gifts, loans and charitable gifts in a year is equal to or less than a prescribed value.

According to s.20(2) of the PAA, an Attorney may receive a gift or loan, if the EPOA permits.

d) Creating a Will and Designating Beneficiaries

Attorneys are **not allowed to make a will** on behalf of a Donor. According to s. 21 of the PAA, any will that is made or changed by the Attorney on behalf of a Donor is not legally valid. Further, if the Donor has given instructions prohibiting delivery of the Will to the Attorney(s), then a person must not provide the Will to the Attorney(s).

An Attorney is also **not allowed to dispose of property** that is designated as a testamentary gift in the Donor's will. Section 19(3)(d) of the PAA provides an exception to this only where the disposition is necessary to comply with the Attorney's duties. According to s. 20(5), an Attorney is allowed to change a beneficiary designation, in an instrument other than a will.

e) Deeds

An Attorney may execute a deed under the seal of the Attorney on behalf of the Donor (whether an individual or a corporation). According to s. 7 of the PAA, as long as it is within the scope of the Attorney's authority, such a Deed is binding on the Donor and is of the same effect as if it were under the seal of the Donor.

f) Delegation and Retaining Services

An Attorney is not allowed to delegate their authority to another person. According to s.23 of the PAA an Attorney must **not** delegate powers and authorities to others, unless expressly empowered to do so in the POA. As of September 1, 2011, an Attorney will also be able to delegate financial decisions concerning investment matters to a qualified investment specialist (e.g. mutual fund manager) in accordance with the Public Guardian and Trustee Act [PGTA] or the Trustee Act [TA].

Despite the inability to delegate authority, an Attorney is permitted to retain services. According to s. 20(4), an Attorney may retain the services of a qualified person to assist the Attorney in doing anything the Donor has authorized.

g) Liability

An Attorney who acts in the course of their legal duties is not liable for any loss or damage to the Donor's financial affairs, if the Attorney complies with:

- the statutory duties of the Attorney, as set out in s.19 of the PAA;
- any directions given by the court under s. 36(1)(a) of the PAA; and
- any other duty that may be imposed by law

To protect innocent persons from liability that would arise from transactions made after the POA relationship has been terminated, British Columbia's PAA modifies the common law with regard to the effects of termination. If the attorney or a third party has acted in good faith, the Act shifts the loss from the attorney or third parties to the donor.

Section 3 of the PAA protects the attorney from liability for acts done in good faith and in ignorance of the termination of his or her authority. Section 4 protects third parties who deal in good faith with the attorney, where the third party and attorney are unaware of the termination.

NOTE: Section 57 of the LTA provides that the principal may file the termination of the agency in the Land Title Office. Filing the notice protects the principal from registration of “instruments” (as defined in the LTA) executed by the attorney after the termination of his or her authority even though the attorney and a third party may have been ignorant of the termination.

b) Records and Accounts

The Donor’s assets and accounts must be kept separate from those of the attorney and any third parties, and

- all assets belonging to the donor which are held by the Attorney must be paid to a **capable** Donor when demanded;
- the accounts must be kept up to date; and
- books, documents, and account records entrusted to the attorney must be available for production to the capable donor at a reasonable time (usually done in annual reviews).

i) Expenses and Remuneration

Payment to an individual (as opposed to the PGT) for service as an attorney under a POA is **rare**. However, s.24 of the PAA allows for an Attorney to be compensated for acting as Attorney where authorized in an EPOA. An Attorney may also be reimbursed for reasonable expenses properly incurred in acting as the Attorney.

X. CHANGING, REVOKING OR ENDING A POWER OF ATTORNEY

A POA will expire in the following circumstances:

- A. death of the Donor or the Attorney;
- B. bankruptcy of the Donor;
- C. frustrating event, similar to contractual obligations;
- D. court appointment of a Committee;
- E. revocation by the Donor, who is still capable; or
- F. resignation of the Attorney(s).

Clients who are making a POA should be informed of the procedure for ending (revoking) or changing the POA. Likewise, clients should also know how an Attorney may resign. In many situations, clients are unaware of their right to end a POA. As long as a Donor has capacity, he or she can revoke a POA. Details of how this is done, are below.

a) Revocation by a Donor

A Donor who has capacity can change, revoke or end a POA at any time. A POA may be revoked either verbally or in writing. Telling someone that the POA is no longer in effect is enough. However, there are important practical considerations for Donors to remember – e.g. a written record of revocation helps protect a Donor from being exploited by an errant ex-Attorney.

A capable Donor who wishes to revoke an existing POA should:

- inform the Attorney(s) in writing that the POA is revoked effective immediately;
- contact all businesses, institutions, and individuals to whom the existence of the POA was known and notify them in writing that it has been revoked, effective immediately, requesting that they destroy all copies of the document which they possess; and
- register the revocation (or termination) at the Land Title Office (only applies where the POA deals with land transactions).

A Donor must receive **consent** from the Attorney(s) before revoking an existing POA, where:

- the Attorney has done or has started doing a task, transaction or activity that she was expressly instructed to do by the donor, or one which was specified in the wordings of the POA; or
- the POA was granted to the Attorney as a security for a liability owed by the donor to the Attorney.

A Donor can give a notice of revocation to the attorney via a standard form (see **Appendix E**).

b) Resignation of the Attorney(s)

An Attorney can also formally resign at any time. An Attorney **must** give written notice to the Donor and any other Attorney(s). The resignation of an Attorney is effective when written notice is given, or on a later date specified in the notice.

An Attorney who loses the capacity to fulfill legal duties should resign. Likewise, if an Attorney is unable or unwilling to act on behalf of the Donor, according to the Donor's instructions, wishes and values, then the Attorney should resign.

As of September 1, 2011, an Attorney who does not sign a POA is not obligated or authorized to act as an Attorney. As such, if a person does not wish to become an Attorney, he or she simply should not sign the POA. The person who chooses not to sign the POA does not have to provide written notice of resignation. However, if a person *does* sign the POA, and wishes to resign from acting as Attorney, then written notice is required.

If a Donor who has capacity does not want the Attorney to act, then the Donor can revoke or change the POA. If a Donor no longer has capacity and others are concerned about the conduct of an Attorney, then you may wish to contact the Public Guardian and Trustee. Refer to section **VI.B: Reporting to the Public Guardian and Trustee** in this chapter, below.

c) Duties after Termination

Even after a POA has come to an end, an Attorney may not use any information gathered during the course of duties as Attorney for personal or private profit. Nor can an Attorney solicit customers from the Donor's business.

Regarding POAs dealing with land: a POA which authorizes the Attorney to deal in land transactions for the donor will expire automatically after **three years from the date of its execution**, unless it is an enduring POA or it expressly exempts itself from that requirement in s. 56 of the LTA.

XI. NO CAPACITY AND NO POWER OF ATTORNEY

If an individual does not complete an enduring or springing POA while they are capable, and later becomes incapable of managing their financial affairs and making decisions related to those affairs, it is too late for prospective planning. The incapable individual is not permitted to create and execute a POA. A capable, interested person will then likely apply to the court for Committeeship, in order to manage the incapable donor's affairs.

If there is no enduring or springing POA and the individual is incapable, their case will be referred to the Public Guardian and Trustee, who will charge a mandatory fee, calculated following item 9(a) of the Fee Schedule in the Public Guardian and Trustee Fees Regulation, B.C. Reg. 312/2000.

XII. A PRACTICAL CLINIC APPROACH TO POA FOR LSLAP STUDENTS

When a client approaches LSLAP for assistance with creating a POA, the following a series of questions should be asked to ascertain the kind of POA that would best suit the needs of the client without putting them at risk of being taken advantage of:

1. Is the client capable (mentally) in the view of the clinician, of granting a POA? The presumption is that all adults are capable. The test is the ability to understand and appreciate the meaning of what they are trying to do in this particular case.
2. Why does the client want a POA?
3. For what purpose does the client require someone else to manage their financial affairs?
4. Does it need to authorize broad powers, or can it be narrowly defined and still meet the needs of the client?
5. What tasks does the Attorney need to be authorized to do to meet the client's needs?
6. When does the POA need to start?
7. Is it appropriate for the POA to have a built-in expiration date?
8. Has the client thought about who they wish to appoint as Attorney(s)?

Students should confer with their supervising lawyer if there is any doubt that the client understands and appreciates the POA. Also note that an adult should not be required to have a POA as a condition of receiving any good or service.

The misuse or abuse of a Power of Attorney is a criminal act and can be prosecuted under s. 331 (Theft by person holding Power of Attorney), s. 332 (Misappropriation of money), s. 215 (Failure to provide necessities of life), or s. 380 (Fraud) of the Criminal Code.

If one has concerns that a person may be abused or neglected, or at risk of being abused or neglected, then one should discuss these concerns with the client and provide him or her with access to appropriate support services (e.g., the Seniors Help & Information Line at: 604-437-1940 or 1-866-437-1940). If a crime is suspected, consult with the supervising lawyer about how to make a report to the appropriate authority. Students need to remember their legal responsibility to maintain professional conduct and client confidentiality.

Power of Attorney abuse is a constant concern. Try to meet with the client alone, or at least without the potential attorney in the room. Make sure to inquire about the relationship between the client and the proposed Attorney and be on alert for possible undue influence or fraud. For more information about abuse and neglect of older adults, please consult:

- B.C. Centre for Elder Advocacy and Support : www.bcceas.ca
- Canadian Centre for Elder Law: www.bcli.org/ccel
- Public Guardian & Trustee: www.trustee.bc.ca
- Vancouver Coastal Health: Resource: www.vchreact.ca
- Advocacy Centre for the Elderly website: www.ancelaw.ca

NOTE: It is possible, and even common, for a donor to appoint an Attorney under the PAA (to make financial decisions) and appoint a different person as a Representative, under the RAA (to make health care decisions). This commonly happens where a person who knows the personal wishes and values of the donor is adept at handling health care decisions, and a more financially astute person is chosen as Attorney.

Representative Agreements and Advance Health Care Planning

Representative Agreements (RA) are governed by the Representative Agreement Act [RAA]. RAs are an instrument by which an individual can proactively plan for the possibility of future incapacity, by appointing another person to make decisions on their behalf. RAs are the primary method by which adults in B.C. can plan for future **health care** substitute decision making. Some RAs allow a limited amount of routine financial substitute decision making (i.e. s.7 RAs and s.9 RAs that were executed prior to September 1, 2011). Although these types of RAs are legally valid, they are rarely used. After September 1, 2011, a s. 9 RA may only be made concerning health care decisions.

In the B.C. health care system, health care providers must speak directly to an individual in order to inform them about health care choices and consequences. An adult with capacity has the right to give or refuse consent for treatments. If, due to illness, accident or disability the individual needing health care may not be capable of understanding the advice, making informed decisions, or providing meaningful consent to the proposed treatment. If the adult has previously enacted an RA, then the Representative(s) will be able to give or refuse consent on behalf of the capable adult, acting as appointed substitute decision-maker(s) to make health care (and perhaps some limited financial) decisions according to the incapable adult's personal wishes, values and beliefs.

An individual making a RA may be in a vulnerable position, where there is potential for abuse. Students must meet the client alone and ensure that the client understands and appreciates the meaning of the RA and its effects. Students should take detailed notes of the client interview and should consider multiple meetings with the client to ensure that the client understands and appreciates the process.

Students should refer to their supervising lawyer if there is any doubt that the client understands and appreciates the RA. Also note that , according to s.3.1 of the amended RAA, an adult must not be required to have an RA as a condition of receiving any good or service.

RAs may come into effect immediately or upon future incapacity. The vast majority of registered RAs come into effect immediately. Students should be aware that the first duty of a Representative is to consult and abide by the personal wishes, values and beliefs of the adult, at all times.

1. Types of Representative Agreements

Under the current RAA, there are two levels of RAs that an adult can choose to create, named for the section which governs them: s. 7 RAs and s. 9 RAs. Both types of RAs allow the adult to select any or all areas of decision making created by the statutory section in which he or she will authorize the Representative to act on his or her behalf.

a) *Section 7 Representative Agreements*

Section 7 RAs designate a substitute decision-maker in the event of the adult's incapacity. The Representative is authorized by the RA to make **major and minor health care decisions** for the adult, and some routine minor legal and financial decisions.

These health care decisions cover the majority of health and personal care related choices that an individual can make over the course of their life. It includes decisions regarding:

- Personal care, including where and with whom the adult is to reside;
- consent to treatment;
- medication;
- minor OR major surgery;
- diagnostics and tests;
- palliative care; and
- living arrangements of the adult.

A s. 7 RA may also allow the Representative to take care of **routine financial affairs** of the adult, including:

- paying bills;
- receiving and depositing a pension and other income;
- purchasing food and other services necessary for personal care; and
- making investments.

The creation of a s. 7 RA does not require the services of a lawyer. LSLAP is able to draft s. 7 RAs for clients. However, students must be aware that a s. 7 RA for the adult is does not permit a Representative to make health care and personal decisions that involve decisions to refuse health care necessary to preserve life, or to physically restrain, move or manage the adult.

b) *Section 9 Representative Agreements*

Section 9 RAs designate a substitute decision-maker for significant and often controversial health care decisions, including:

- where the adult is to live and with whom, including whether the adult should live in a care facility
- whether the adult should work and, if so, the type of work, the employer, and any related matters
- whether the adult should participate in any educational, social, vocational or other activity

- whether the adult should have contact or associate with another person
- whether the adult should apply for any licence, permit, approval or other authorization required by law for the performance of an activity
- day-to-day decisions on behalf of the adult, including decisions about the diet or dress of the adult
- giving or refusing consent to health care for the adult, including giving or refusing consent in the circumstances specified in the RA to specific kinds of health care, even where the adult refuses to give consent at the time the health care is provided
- physically restraining, moving and managing the adult and authorizing another person to do these things, if necessary to provide personal care or health care to the adult

Students should be aware that a s.9 RA, unless expressly provided for in the RA, must not:

- give or refuse treatment in accordance with s.14(2)(f) of the HCCCFAA.
- make arrangements for the temporary care and education of the adult's minor children, or any other person who is cared for or supported by the adult; or
- interfere with the adult's religious practices.

In a s. 9 RA, if a Representative is provided the power to give or refuse consent to health care for the adult, then the Representative may give or refuse consent to health care necessary to preserve life.

As of September 1, 2011, the creation of a s. 9 RA will not require the services of a lawyer. LSLAP is able to draft s. 9 RAs for clients. However, refer to your supervising lawyer to clarify the appropriate scope and purpose of the RA: which type of RA appropriately meets the needs of the client?

2. Who Can Be a Representative?

Section 5(1)(a) of the RAA specifies that an individual who is 19 years of age or older can be appointed as Representative unless that person is:

- providing personal care or health care services to the adult for compensation, unless the caregiver is a spouse, adult child, parent, grandparent, an adult brother or sister or any other adult relation by birth or adoption; or
- working as an employee of a facility in which the adult resides and through which the adult receives personal care or health care services.

The Public Guardian and Trustee can also be named as a Representative. According to s.5(1)(c), a credit union or trust company only to serve under the (limited) financial decisions listed in a s. 7 RA. A credit union or trust company cannot make decisions regarding health care or personal care.

Under s. 5(2) of the RAA, an adult can also name more than one Representative either:

- a) over different areas of authority; and/or

- b) over the same area of authority, in which case, the Representatives must be unanimous in exercising their authority.

Section 5(4) requires that all Representatives complete a certificate in the prescribed form (see **Appendix K**).

3. Acting as a Representative

The law defines several duties that Representatives owe to the adult. There are several statutory parameters between what a Representative must do (e.g. consult with the adult) and what a Representative must not do (e.g. make a will). Below is an outline of the legal “do’s and don’ts” that a Representative must follow.

c) *Duties*

A Representative must:

- act honestly and in good faith;
- exercise the care, diligence and skill of a reasonably prudent person; and
- act within the authority given in the RA.

When making decisions with the adult or on behalf of the adult, the Representative must consult with the adult to determine his or her current wishes, **and** comply with the wishes of the adult.

If the current wishes of the adult cannot be determined, then the Representative needs to comply with the instructions or wishes the adult expressed while capable. A Representative cannot make decisions based on their own opinion, but must **represent** the adult’s own wishes to health care providers and others. In other words, a Representative must “stand in the shoes” of the adult and base health care decisions on what the adult would want.

If the adult’s instructions or wishes are not known, the Representative must act on the basis of the adult’s known beliefs and values, or in the adult’s best interests, if his or her beliefs and values are not known.

Upon application by a Representative, the Court may exempt the Representative from the duty to comply with the instructions or wishes the adult expressed while capable.

Students should encourage an adult to communicate instructions and wishes to the named Representative(s). This should be done in writing (including by e-mail or recorded transmission), but can also be done orally, for as long as the adult has capacity. It is best that the Representative(s) know exactly what the adult would want.

d) *Delegation of Authority*

A Representative is not able to delegate authority to another person. The exception to this is where a Representative who has been appointed to make financial investments on behalf of an adult, may delegate authority to qualified investment specialist, including a mutual fund manager. A Representative may also retain the services of a qualified person to assist in carrying out the adult’s instructions or wishes.

e) *Accounts and Records*

A Representative must also keep accounts and records concerning the exercise of authority. These accounts and records must be produced upon request of the adult, the appointed monitor or the Public Guardian and Trustee. A Representative who has been appointed to make financial decisions, must keep the adult's assets separate from their own. An exception to this exists where the assets are owned by the adult and the Representative as joint tenants or have been substituted for, or derived from, assets owned by the adult and the Representative(s) as joint tenants.

f) *Access to Information*

A Representative may request information and records respecting the adult, if the requested information or records relate to the incapacity of the adult or an area of authority granted under the RA.

A Representative also has a duty to keep information confidential. A Representative must not disclose information or records, except where it is necessary to perform the duties owed to the adult; or, for the purposes of an investigation by the Public Guardian and Trustee; or to make an application to or to comply with an order of the court.

g) *Creating a Will*

A Representative must not make or change a Will for the adult for whom the Representative is acting, and any change to a Will that is made for an adult by his or her Representative has no force or effect.

h) *Remuneration and Expenses*

A Representative (or an alternative Representative or monitor) is not entitled to be paid for acting on behalf of the adult, unless the RA expressly sets out and authorizes the amount or rate of remuneration and either upon application, the court authorizes the remuneration or the adult consulted with a lawyer or notary who has completed a consultation certificate.

For an example of the consultation certificate, refer to **Appendix P: Certificate of Person Consulted About a Representation Agreement** at the end of this chapter.

A Representative, alternative Representative, or monitor is also entitled to reimbursement for reasonable expenses incurred in the course of performing the duties or exercising the powers. Accounts and records of the reasonable expenses paid must be kept.

4. **Creating a Representative Agreement**

The adult who executes the Representation Agreement (RA) must have mental capacity. For guidance on mental capacity, refer to section **III.B: Mental Capacity/ Health Care Decisions- Representative Agreements** in this chapter.

The RA must also be in writing, signed and witnessed. The adult and each of the Representative(s) must sign the RA. Two adults must witness the signatures, unless it is being witnessed by a lawyer or notary.

Witnesses **cannot** be:

- one of the Representatives;
- an alternate Representative;

- a spouse, child, or parent of anyone named in the RA as a Representative or alternate Representative;
- an employee or agent of a Representative or alternate Representative;
- anyone under 19 years of age; or
- anyone who does not understand the type of communication used by the adult who wishes to be represented.

Each Representative and each witness must also complete a certificate. See **Appendix K: Certificate of Representative or Alternative Representative** and **Appendix N: Certificate of Witness** at the end of this chapter.

An RA becomes effective on the day it is executed, unless the RA specifies that it is to become effective at some later time based upon a triggering event (e.g. loss of capacity). According to s. 15 of the RAA, the RA must specify how a triggering event is to be confirmed and by whom (e.g. loss of capacity confirmed by two medical professionals).

Although there is no legal requirement to register an RA, registration may be done through the Nidus e-Registry. When a person registers, he or she can decide which organizations can access his or her record. For more information contact Nidus Personal Planning Centre online at www.nidus.ca or by telephone at (604) 408-7414.

5. Changing, Revoking or Ending a Representation Agreement

An RA can be changed or revoked by the adult (as long as the adult has mental capacity) at any time. The adult must provide written notice to the Representative(s), alternative Representative(s) and the monitor. The change or revocation is effective either when written notice is given to each of these persons, or on a later date specified in the written notice.

In British Columbia, an RA terminates where:

- the adult who made the agreement revokes the RA;
- the adult who made the agreement or the Representative dies;
- the court issues an order that cancels the RA;
- the Representative becomes incapable or resigns; or
- as provided for under s. 19 of the PPA.

Where the adult who made the agreement and the Representatives are spouses, then a RA will normally end when the marriage or marriage-like relationship ends. However, if the RA explicitly says that the RA will continue to be in effect after the end of the marriage or marriage-like relationship, then the RA will continue.

6. Other Jurisdictions

As of September 1, 2011, RAs from other jurisdictions may be accepted in British Columbia. Subject to any further limitations or conditions set out in the regulations, the criteria for accepting an extrajurisdictional RA is that it must:

- perform the function of a RA
- be made in a jurisdiction outside BC; and
- comply with any prescribed requirements.

7. No Capacity and No Representation Agreement

Where there is no Representative previously appointed and an adult no longer has capacity, various provincial laws apply. The statutory framework allows for the appointment of a temporary substitute decision-maker (Health Care (Consent) & Care Facility (Admission) Act, [HCCFA]); involves Designated Agencies to investigate allegations of abuse or neglect and provide necessary support and assistance (Adult Guardianship Act [AGA]); and grants investigatory and decision-making power to the Public Guardian and Trustee (Public Guardian and Trustee Act [PGTA]). Below is an outline of the legal parameters for each of these processes.

i) Temporary Substitute Decision-makers (TSDM)

In British Columbia, a health care provider is legally required to get consent prior to treating a patient. A capable adult to give or refuse consent to health care treatment. Consent to health care may be expressed orally or in writing or be inferred from conduct. Where a patient is incapable (i.e. due to illness, loss of consciousness or injury) health care providers are required to get consent from a substitute decision-maker. If the patient has a Representation Agreement (RA) in place, then the instructions for consent will need to be obtained from the Representative. If the patient has an Advance Directive (AD) in place, then consent may be given in the AD. If no Representative and no Committee are in place, then the health care provider will need to find a temporary, substitute decision-maker (TSDM) to give or refuse consent.

The HCCFA outlines the specific procedures that health care providers must follow to obtain legally valid consent. Section 16 of the HCCFA sets out the “**default list**,” which health care providers must follow (in hierarchical order) to determine the appropriate person to act as a TSDM.

The default list provided in s.16 of the HCCFA is as follows:

To obtain substitute consent to provide major or minor health care to an adult, a health care provider must choose the first, in listed order, of the following who is available and qualifies under subsection (2):

- the adult's spouse or partner;
- the adult's child who is over 19;
- the adult's parent;
- the adult's brother or sister;
- the adult's grandparent;
- the adult's grandchild;
- other relatives by birth or adoption (but not in-laws or step-children);
- close friend;
- persons immediately related by marriage (including in-laws and step-children).

To qualify to give, refuse or revoke substitute consent to health care for an adult, a person must:

- be at least 19 years of age;
- have been in contact with the adult during the preceding 12 months;
- have no disputes with the adult;

- be capable of giving, refusing or revoking substitute consent, and
- be willing to comply with the duties in section 19.

If no one listed in subsection (1) is available or qualifies under subsection (2) or if there is a dispute about who is to be chosen, the health care provider must choose a person authorized by the Public Guardian and Trustee (which can include a person employed in the Office of the Public Guardian and Trustee).

The TSDM must act in accordance with the adult patient's wishes, values and beliefs, when the patient is unable to provide their own consent, and does not have an appointed Committee or a Representative.

j) Designated Agencies

If an older adult is being abused, neglected or self-neglected and is unable to access the necessary support or assistance on her own, anyone may notify a Designated Agency, who will meet with the adult to decide on what steps can be taken to provide the appropriate support or assistance.

Designated Agencies are defined in the AGA and include BC Community Living and the provincial Health Authorities. Where an adult is in need of support or assistance, a Designated Agency may take any of the following courses of action:

- investigate whether abuse or neglect is happening
- provide assistance to obtain care, social support, or legal guidance
- assist in obtaining an appropriate Representative or guardian
- inform the Public Guardian and Trustee
- prepare and implement a support and assistance plan with the adult
- apply to the court for an order authorizing the provision of services

Designated Agencies are legally required to:

- involve the adult in decisions about how to seek support and assistance
- provide the necessary support and assistance to prevent abuse or neglect
- respect the right for an adult with capacity to refuse support or assistance

Legal professionals need to remember their responsibility to maintain professional conduct and client confidentiality with respect to their clients. There is not a mandatory requirement to report abuse, neglect or self-neglect.

Students should refer to the supervising lawyer, assess the situation with the client and make sure she has access to all available resources in her community. If the situation is an emergency, **call 9-1-1**. If the situation is not an emergency, but the older adult is in need of support and assistance, then a Designated Agency may be contacted. A report to a Designated Agency can be made anonymously. Refer to sections **I.C: Resources** and **I:D Designated Agency** in this chapter for further relevant information.

k) The Public Guardian and Trustee (PGT)

The Public Guardian and Trustee (PGT) has the statutory authority to investigate decisions made by Attorneys or Representatives. The statutory powers allow the PGT to:

- protect a person's financial affairs and assets in urgent situations for up to seven days and can extend the freeze period;
- apply to court for a temporary guardianship order;
- ask the court for an order allowing access to information previously denied when undertaking an audit or investigation; and
- act as Representative, associate or substitute decision-maker or guardian for an adult where there is no one available to make necessary decisions.

Any person can also make an objection to the PGT if there is a reason to believe that fraud, undue pressure or some other form of abuse or neglect is being or was used to induce an adult to make, change or revoke financial or legal document. Any person may also notify the PGT where he or she has reason to believe that a Representative is:

- incapable of acting as Representative
- abusing or neglecting the adult
- failing to follow the instructions in the RA
- otherwise failing to fulfill the duties of a Representative

On receiving an objection, the PGT must promptly review the situation and may do one or more of the following:

- conduct an investigation
- apply to the court for an order confirming a change or revocation of the RA or cancelling part of a RA
- apply to the court for an order that the RA is not invalid
- recommend that someone else make a court application
- make a report to a designated agency, requesting support and assistance in accordance with s. 46 of the AGA
- appoint a monitor
- authorize remuneration for a monitor
- take any other action considered necessary.

The Public Guardian and Trustee Act [PGTA] requires that the PGT regularly report on service delivery and financial issues to the Attorney General. It also provides that the Trustee will be audited by the Auditor General annually, and will be able to call on the assistance of an advisory board that can give advice on service delivery matters. Students can find contact information for the Public Guardian and Trustee in sections **I.C.: Resources** and **I.D.: Designated Agencies** in this chapter.

II. A Practical Clinic Approach to RA for LSLAP Students

When a client approaches LSLAP for assistance with creating an RA, students should ask the following questions in order to ascertain the kind of RA that the client needs and whether LSLAP can assist them:

1. Is the client capable of creating an RA? The presumption is that all adults are capable. The test is the ability to understand and appreciate the meaning of what they are trying to do in this particular case.
2. Why does the client want to create an RA?
3. Who is the client considering to be their Representative?
4. What is the relationship between the client and their chosen Representative?
5. Where does that person fit on the default list?
6. Are there signs of abuse, neglect or self-neglect? Does the adult have access to community resources? Is there a need to involve a Designated Agency?
7. Which specific authorities would the client like their Representative to have?
8. Have they spoken to their chosen Representative to see if they are willing to serve?
9. What is the status of the client's will? Explain that wills do not provide direction or authority if testators become incapable, and POAs/RAs do not function like wills.

Students should refer to their supervising lawyer if there is any doubt that the client understands and appreciates the RA. Also note that , according to s.3.1 of the amended RAA, an adult must not be required to have an RA as a condition of receiving any good or service.

If there are concerns that a person may be abused or neglected, or at risk of being abused or neglected, the student should discuss these concerns with the client and provide information and access to appropriate support services (e.g., Seniors Help & Information Line at: 604-437-1940 or 1-866-437-1940).

Students also need to remember their legal responsibility to maintain professional conduct and client confidentiality. If abuse or neglect is suspected, consult with the supervising lawyer about how to make a report to the appropriate authority. Refer to sections **I.C: Resources** and **VI: Abuse and Neglect** in this chapter.

III. Advance Directives

An Advance Directive (AD) is a written document made by a capable adult that gives or refuses consent to health care, in the event that he or she becomes incapable of giving health care instructions. The legal provisions for Ads are set out in Part 2.1 of the HCCFA.

NOTE: As of September 1, 2011, an AD will be legally binding upon health care decisions. Prior to this date, an AD was not legally binding. After this date, any AD that is valid (i.e. was made with appropriate capacity and consent) will be legally binding

1. Health Care Providers

The law provides detailed guidelines for how a health care provider is to respond when an AD is in place. According to s. 19.7 of the HCCFA, health care providers are to rely on the instructions given in an AD when:

- health care provider is of the opinion that an adult needs care;
- the adult is incapable of giving or refusing consent to the health care;
- the health care provider does not know of any personal guardian or Representative who has authority to make decisions for the adult in respect of the proposed health care; and
- the health care provider is aware that the adult has an AD that is relevant to the proposed health care.

The health care provider is to make a reasonable effort in the circumstances to determine whether the adult has an AD, Representative or guardian. If the adult has both a RA and an AD, then the health care provider must seek consent from the Representative. According to s.19.3, instructions in the AD will be treated as wishes expressed while capable, which are binding on a Representative; unless, the AD expressly states that: “a health care provider may act in accordance with the health care instructions set out in the advance directive without the consent of the adult’s Representative.”

An AD does **not** apply in certain circumstances. According to s. 19.8 of the HCCFA, a health care provider is **not** to rely on an AD where:

- instructions in the AD do not address the health care decision to be made;
- instructions in the AD are so unclear that it cannot be determined whether the adult has given or refused consent to health care;
- since the AD was made, while the adult was capable, the adult’s wishes, values or beliefs in relation to a health care decision significantly changed; or
- since the AD was made, there have been significant changes in medical knowledge, practice or technology that might substantially benefit the adult in relation to health care.

The central purpose of an AD is to give or refuse consent to health care. If the adult has given consent in an AD, then the health care provider may provide that health care. If the adult has refused consent in an AD, then the health care provider must not provide that health care.

If a health care provider is not aware that the adult has an AD that refuses consent to specific health care and provides that health care to the adult, but subsequently becomes aware of an AD in which the adult has refused consent, then the health care provider must withdraw the health care.

It is possible for an adult who does not complete an AD to still receive health care. Completion of an AD **must not be mandatory** prior to providing any good or service (i.e. health care). In other words, an adult has the right to **not** complete an AD. For example, where an adult is being admitted to a health care facility and instructed to “fill out these forms” prior to treatment, the adult does not have to fill out the AD. Students should make their clients aware of this right to refuse to complete an AD and will still be eligible to receive health care treatment.

In the absence of an AD, if the adult has not appointed a Representative, then the health care provider will seek consent from a Temporary Substitute Decision-Maker (TSDM), as set out in s. 16 of the HCCFA.

2. Making an Advance Directive

An AD must include or address any prescribed matter and indicate that the adult knows the following:

- a health care provider may not provide any health care for which the adult refuses consent in the AD; and
- a person may not be chosen to make decisions on behalf of the adult in respect of any health care for which the adult has given or refused consent.

For more information, refer to section **II.B: Mental Capacity; Health Care Consent** in this chapter.

3. Changing, Revoking or Ending an Advance Directive

An adult with capacity is able to revoke or change an AD at any time. According to s. 19.6 of the HCCFA, an adult who has made an AD may change or revoke the AD as long as the adult is capable of understanding the nature and consequences of the change or revocation.

A change must be made in writing. The amended AD must also be signed and witnessed by two capable adults (unless one witness is a lawyer or notary).

A revocation may be made by expressing an intention to revoke an AD and then making another document, including a subsequent AD. Alternatively, an AD may be revoked by destroying the AD with the **intention** to revoke it.

NOTE: The adult should have their AD added to their doctor’s patient files, their hospital records, and any other relevant agencies. If the AD is revoked or altered, the adult should advise each of these agencies or provide them with the new or revised AD.

IV. A Practical Clinic Approach to AD for LSLAP Students

When a client approaches LSLAP for assistance with creating an AD, students should ask the following series of questions in order to ascertain whether LSLAP can assist them:

1. Is the client capable of creating an AD? The presumption is that all adults are capable. The test is the ability to understand and appreciate the meaning of what they are trying to do in this particular case.
2. Why does the client want to create an AD?
3. What types of health care provision does the client want to give consent to?
4. What types of health care provision does the client want to refuse consent to?
5. Does the client have a RA in place? What is the relationship between the client and their chosen Representative?
6. Does the client want the Representative to be able to give or refuse consent, notwithstanding the AD?

Students should refer to their supervising lawyer if there is any doubt that the client understands and appreciates the AD. Also note that an adult is not required to have an AD as a condition of receiving health care treatment.

If there are concerns that a person may be abused or neglected, or at risk of being abused or neglected, the student should discuss these concerns with the client and provide information

and access to appropriate support services (e.g., Seniors Help & Information Line at: 604-437-1940 or 1-866-437-1940).

Students should refer to their supervising lawyer if there is any doubt that the client understands and appreciates the AD. Students must also need to remember their legal responsibility to maintain professional conduct and client confidentiality. If a abuse or neglect is suspected, consult with the supervising lawyer about how to make a report to the appropriate authority.

Refer to sections **I.C: Resources** and **VI: Abuse and Neglect** in this chapter.

XIII. APPOINTED GUARDIANSHIP

It is often the case that an individual who has not executed a POA or RA becomes **incapable** of managing their affairs and needs to create a guardianship document to appoint an Attorney or Representative to assist them. If that individual is still **legally capable**, they can still create either or both of a POA (which has a medium threshold of capability) or a RA (which has a low threshold of capability under s. 7 and a medium to high threshold under s. 9).

However, a person who is unable to manage their financial or health care affairs may also be **legally incapable**, meaning that they do not meet the threshold of mental capability required to execute a legal document such as a POA or RA. If this is the case, then the individual (called a “patient”) is no longer able to lead their advance financial or advance health care planning. At this time in B.C., the law is dichotomous: either an individual is mentally capable for the purposes of the law and they can execute their own personal planning documents (POAs or RAs), or they are mentally incapable for the purposes of the law and another person must be appointed as their guardian by the court, although in the case of RA’s there is no conclusive case law on this point.

Another interested person (relative or friend) who is legally and practically capable of caring for the patient **must take action** in order to be granted the authority to act on behalf of the now incapable patient. This process is called Committeeship, and the person appointed by the court to be the guardian of the patient is called a Committee. Clinicians may consult CCEL, CLAS and the Public Guardian and Trustee for more information on Committeeship. Clients may be advised to contact an Estate and Guardianship Litigation lawyer. This may be done through the Law Society’s Lawyer Referral Service (604-687-3221).

NOTE: Bill 29 includes provisions that will entirely replace the PPA with modern guardianship legislation. However, these have not yet come into force.

Committeeship

Adult guardianship (called Committeeship) is currently governed by the Patient’s Property Act, R.S.B.C. 1996 c. 349 [PPA]. A Committee is a person appointed by the court to make decisions for an individual (the patient) who is incapable of making those decisions for him or herself.

An individual may be incapable from birth, or may become incapable at some point later in their life.. An individual may be rendered incapable due to an accident, illness, or a disability. Committee is appointed where a person has become incapable and does not have a POA or RA in place.

Being a Committee is the highest form of fiduciary obligation that one person can hold to another. If a Committee is appointed, it overrules and ends any previous POA and/or RA. **However, Committeeship is rarely necessary where there are valid Advance Planning**

Documents in place. If there is either or both an Attorney, or Representative, then a Committee can only be appointed if these Representatives are failing to properly fulfill their duties under the PAA and RAA, respectively.

NOTE: Committeeship and its application is a Supreme Court procedure. Provincial courts do not have the jurisdiction required. Consequently, LSLAP **cannot** represent clients who are applying for Committeeship, **nor** can LSLAP complete the required forms and documents required for applications. The role of LSLAP in assisting clients with Committeeship matters is strictly informational and advisory.

Also note that the provincial government has approved significant changes to the adult guardianship provisions made in the Adult Guardianship Act. (referred to as “Bill-29”). However, these changes have not yet been brought into effect. When these changes do come into effect, the PPA will be repealed. The description of the law provided in this chapter is current to July 20, 2011. Check with your legal supervisor and/or government websites to find out whether amendments to the law have recently come into effect.

THE TYPES OF COMMITTEESHIP

There are two forms of Committeeship, which correspond roughly with the areas of authority under POA or RA. A Committee may have one, or both of these authorities.

a) Committee of the Estate

A Committee of the Estate has the authority to make **financial and legal decisions** on the patient’s behalf. This routinely includes:

- controlling the patient’s income;
- conducting banking;
- paying expenses; and
- budgeting for the patient’s family.

As circumstances dictate it can also include the authority to:

- dispose of personal and real property through sale or gift;
- enter into contracts on the behalf of the patient;
- operate the patient’s business; or
- bring and defend against all lawsuits in which the patient is a party.

b) Committee of the Person

A Committee of the Person also holds the authority to make decisions regarding the patient’s **health and well-being**, place of residence, and admission to a health care facility. This can include such decisions as:

- medical treatment;
- medication; or
- consent to treatment.

A Committee of the Person can only be appointed by the court.

A patient may have either a Committee of the Estate, a Committee of the Person, or both. Usually, **but not always**, a person who is incapable of managing their

personal health care decisions is also incapable of handling financial and legal decisions. Therefore, a Committee of the Person is frequently coupled with a Committee of the Estate. It may be that the same individual is appointed to a Committee comprising both estate and person, or it may be that separate individuals are appointed to each Committee.

BECOMING A COMMITTEE

There are two steps involved in becoming a Committee for an individual who is incapable:

- an application must be made to the court to have the patient declared incapable; and
- if the individual is ruled as incapable by the court, an application is then made for the court to appoint an individual as Committee.

Both of these may be filed as a single application.

DECLARATION OF PATIENT INCAPABILITY

An individual **must** be declared incapable of managing his or her affairs (either financial, personal, or both) before the court can appoint a Committee.

1. Generally, the first step in the process is to obtain the opinion of two separate doctors on the capability of the proposed patient (the subject).
2. The next step is a formal application to the court for an order declaring the subject incapable of managing his or her affairs.
 - a) Section 2 of the PPA provides that the Attorney General, a near relative of the subject, or any other person may file an application to the court for an order declaring incapability.
 - b) This application must be accompanied by the affidavits of two duly qualified medical practitioners setting forth their opinion that the subject is incapable of managing his or her affairs.
3. Notice of the application to the courts must be personally served on the subject not less than 10 days prior to the date of the application hearing. See s. 2 of the PPA.
 - However, in rare cases, an *ex parte* hearing can be held wherein the notice requirement may be waived if the court is satisfied that to serve notice of the application would injure the subject's health, or would otherwise be inadvisable.
 - In order for a waiver of notice to be granted, there must be a medical practitioner advising the court that it would harm the subject to be served with notice of the application.
 - In light of s. 7 of the Canadian Charter of Rights and Freedoms which prohibits restrictions on life, liberty, and security of person which are not in accordance with the principles of fundamental justice (this impliedly includes the right to be notified of legal action concerning you), a failure to provide notice may be unconstitutional.
4. If the subject is already a patient in a mental health facility or a psychiatric unit, he or she can be declared incapable without application to the court. The Director of the

facility or the officer in charge of the psychiatric unit can sign a certificate that states that the subject is incapable of handling their affairs.

- In this process, the PGT automatically becomes the Committee of the patient.
- This ends any pre-existing enduring or springing POA or RAs.

RESISTING A DECLARATION OF INCAPABILITY

The subject of the application is usually aware of the court application for a declaration of incapability. If the subject wishes to oppose it, he or she should get a lawyer for the application hearing. The judge may direct that the incapacity issue be tried in Supreme Court (PPA).

c) Challenging Affidavits

The affidavits of the medical practitioners may be challenged. Under the PPA s. 5(2), the judge may order that the subject be examined by one or more duly qualified medical practitioners other than those whose affidavits were before the court. The judge may also order an examination by a board of three or more duly qualified medical practitioners designated by B.C.'s College of Physicians and Surgeons.

Section 5(3) of the PPA provides that the judge must order such an examination if the subject asks, unless the court or judge is satisfied that the person is not mentally competent to form and express the request.

d) Appeals

If the subject unsuccessfully opposes the application, he or she can appeal to the B.C. Court of Appeal. The PPA does not preclude the power of *habeas corpus* and other prerogative writs. The MHA specifically preserves the power of prerogative writs.

e) Subsequent Applications

Except by leave of a judge, a patient shall not be the subject of an application for an order declaring him or her incapable more than once a year (PPA, s. 4(2)).

APPOINTMENT OF A COMMITTEE

Once the subject has been declared incapable, the judge can consider an application for the appointment of a Committee. This appointment is governed by the PPA.

f) Private Committee

A family member, friend, or any other person can apply to the court to become a Committee of the patient.

The application must include:

- Petition *Præcipe*;
- Affidavit of Service (unless notice requirement was waived);

- Affidavit of Kindred and Fortune;
- Affidavit from Doctor (two);
- Notice of Application to Appoint a Committee;
- Chamber Order to Appoint a Committee;
- consents of next-of-kin to comply with Rule 51A of the Rules of Court.

If the Committee was nominated by the patient prior to incapability, then the written nomination should also be included (see **Section IV.A.6.c: Nomination of Committee by Patient**, below).

g) Notice to the Public Guardian and Trustee

Section 7 of the PPA provides that notice in writing of the application must be served on the PGT 10 days prior to the hearing of the application and, if applicable, to a Committee already appointed. The PGT can review the application and oppose the appointment if the applicant is considered unsuitable. The PGT may also impose terms on the Committee. If the PGT does not oppose the appointment, it will issue a letter to that effect. The applicant must present this letter to the judge at the time of the Committee application.

b) Nomination of Committee by Patient

Under s. 9 of the PPA, an individual has the power to nominate a Committee of his or her choice. However, the person nominated cannot serve as a Committee until appointed by the court. The nomination must be in writing and signed by the person when he or she was of full age and of sound and disposing mind (i.e. before the court declares him or her incapable). A person may want to execute a nomination and have a lawyer hold it in reserve to be released if there is an application for the appointment of a Committee.

The nomination must be executed in accordance with the requirements for the making of a will under the Wills Act, R.S.B.C. 1996, c. 489 [WA], which are that it must be in writing, signed by the nominator and properly witnessed (WA, ss. 3, 4).

Note that members of the armed forces, ship workers, and fishers are exempt from some of the formal requirements; see the WA, s. 5.

Other than compliance with the WA, there are no formal requirements for the nomination of a Committee. Therefore, a brief, clear statement may be best. E.g.: “In the event of my becoming mentally incapacitated, I hereby nominate <name of nominee> as my Committee. <Signed and Dated.> Witnessed in the presence of the signatory, who signed in our presence. <Signature of Witnesses>.” Each witness must be present at the time the other witness ascribed his or her name on the document.

If the nomination is in proper form, it will later be submitted with the application for the appointment of a Committee. The judge shall appoint the Committee that has been so nominated “unless there is good and sufficient reason for refusing the appointment” (PPA, s. 9).

i) Costs

The costs of all proceedings are in the discretion of the court (PPA, s. 27). Generally, the court orders payment of all the Committee's reasonable legal fees from the patient's estate so the applicant does not suffer losses for doing what, in many cases, is considered his or her moral obligation. Even though the patient's estate initially pays costs, the PGT later reviews the costs to ensure they are reasonable. If the fees paid by the patient's estate are inaccurate, the Committee must return the excess amount to the patient's estate. The Committee should have legal fees reviewed by the registrar of the court if unsure of their reasonableness.

j) Public Guardian and Trustee as Committee

The Public Guardian and Trustee of B.C., a branch of the provincial Attorney General's Office, will act as a Committee when no other party is willing or able to act, or where there is conflict among family members about Committeehip and a neutral party is preferred. The PGT acts as Committee of the Estate in many more cases than as Committee of the Person.

Most often, incapable persons require assistance with their financial and legal matters but do not require assistance with their personal health needs. The Office of PGT is also at a disadvantage providing the latter services because they require considerable personal supervision.

The Public Guardian and Trustee can become involved in one of two ways:

1. a person can make an application to declare the individual incapable. This can be filed along with a request that the PGT be appointed Committee;
2. alternatively, an interested party may contact the PGT directly and office personnel will investigate the matter and begin proceedings. The advantage of personally commencing the proceedings is that the matter will almost invariably be dealt with more quickly. The disadvantage is that some steps must be taken to begin the proceedings.

The Public Guardian and Trustee's legal staff needs to know:

- client's full name, address and relationship to the patient;
- names and addresses of the patient's spouse and other next of kin;
- patient's age and occupation;
- patient's current address;
- an inventory (as complete as possible) of the patient's assets, including: real property, bank accounts, safety deposit boxes, automobiles, bonds, shares, etc.;
- whether the patient has a will, and if so, its location;
- patient's rights to any income;
- patient's debts; and
- approximate monthly cost of providing for him or her.

SERVING AS COMMITTEE

k) Duties

The Committee's general duty is to exercise his or her powers for the benefit of the patient, having regard to the nature and value of the patient's property, and the patient's circumstances and needs and those of his or her family (PPA, s. 18). **The Committee is not allowed to use or take any benefit from his or her position.** When the patient has assets, the court generally will require that the Committee post a bond to secure the proper performance of these duties (PPA, s. 10(1)(c)). If the Committee is unable to post a bond that person will only have access to the money required to care for the patient's day-to-day needs. The Committee may use professional services to assist him or her in some duties. However, professionals cannot be retained to do actions an ordinary person could perform. The cost of professional services is paid for by the patient's estate.

Specific duties of the Committee include:

- passing accounts before the PGT at the times directed by the PGT (PPA, s. 10(d)), including, if the PGT requires it, a true inventory of the whole estate of the patient. The patient's assets are not the Committee's and thus, the Committee must account to the PGT for all transactions. Provisions regulating this duty are contained in s. 10 of the PPA and in Rule 4 of the rules governing the Act in the B.C. Supreme Court Rules of Court, B.C. Reg. 311/76;
- upon the patient's death, the Committee is no longer required to pass accounts before the PGT, but must provide the Committee's accounts to the executor or administrator of the patient's estate, or, if the Committee and the executor or administrator of the patient's estate are the same person, to the beneficiaries of the patient's estate (PPA, s. 24);
- paying patient's maintenance, care and treatment costs out of the estate (s. 23);
- bringing an action, if necessary, on behalf of the patient as his or her guardian *ad litem* (s. 22);
- exercising the rights, powers, duties, and privileges of the patient after the patient's death as if he or she had not died, and serving as executor or administrator until letters probate of the will or letters of administration to the estate of the patient are granted and notice in writing is served upon the Committee (s. 24); and
- filing income tax returns and applying for pensions.

l) Powers

The Committee of the Estate has all the rights, powers, and privileges over the patient's estate as the patient would have if he or she were of full age and of sound and disposing mind (PPA, s. 15). This includes those powers that would have been exercisable by the patient as a trustee, guardian of a person, holder of power of appointment or as the personal Representative of a person (PPA, s. 17). However, the court has discretion to place limits on those powers. In such a case, those powers that were withheld would fall to the Public Guardian and Trustee.

A Committee of the Person has the “custody of the person” of the patient. This means the Committee is responsible for the person’s welfare and well-being.

For investing money, a Committee is a trustee within the meaning of the Trustee Act, R.S.B.C. 1996, c. 464 (PPA, s. 15(2)). Therefore, a Committee has considerably less freedom to invest the patient’s money than an attorney has to invest a principal’s money. When advising a client which procedure is preferable, keep this in mind.

As a consequence of this transfer of rights, every gift, grant, conveyance, or transfer of property made by the individual after he or she has been declared a patient may be deemed fraudulent (PPA, s. 20). This will occur where full and valuable consideration has not been given, or where the donee, grantee, or transferee had notice of the patient’s mental condition.

NOTE: An Enduring Power of Attorney is terminated when the incapable person is declared a “patient” under the PPA when a Committee is appointed by court order under s. 19 of the PPA. If an incapable person is declared a “patient” under PPA, s. 19(1), an enduring POA is suspended until the principal ceases to be a patient. Hence, the authority of a Committee will never conflict with that conferred by a Power of Attorney.

m) Remuneration

Under s. 14 of the PPA, a person is allowed “reasonable” compensation from the patient’s estate for services rendered as Committee. However, a person does not have to claim compensation. The amount of compensation is fixed on the passing of the accounts to the PGT.

If the PGT acts as the Committee, an administration fee will be charged to the estate. A commission of 5 percent of the gross value of the estate, and 5 percent of income earned will be charged. In addition, an asset management fee of 0.04 percent will be charged yearly on the gross value of all assets. However, fees may be reduced or waived where the PGT is satisfied that hardship or injustice would result from charging the full fee.

A Committee has a first lien upon the estate of the patient or the person who has ceased to be a patient.

NOTE: Refer to the Rules Governing the PPA in the B.C. Supreme Court Rules of Court. The PGT also has helpful information at: www.trustee.bc.ca.

DISCHARGE OF A COMMITTEE

n) Committee Other Than the Public Guardian and Trustee

On application by the Attorney General, the PGT, or any other person, a judge may rescind the appointment of a person (other than the PGT) appointed as Committee (PPA, s. 6(2)). This application may be filed along with an application for a new Committee. This cancels the Committee’s authority to act for the patient.

If a person regains his or her mental capability and ceases to be a “patient,” that person, or the Committee, may apply to the court for the discharge of the Committee

(PPA, s. 12). Notice in writing of this application must be provided to the PGT 10 days prior to the application. The judge who hears the application may, and shall if asked by the PGT, order the Committee to pass accounts. There will almost always be outstanding accounts. The fees payable will be rescinded as of the date of the order and discharged on the passing of accounts.

An order of discharge or a discharge by the passing of accounts before the PGT is required before a security bond, if any, can be cancelled.

o) Release from Liability

A discharged Committee is released from liability concerning the management of the estate except in respect of undisclosed acts, neglects, defaults, or accounts; or where the Committee was dishonest or unlawful in his or her conduct (PPA, s. 13(4)(b)). A difference of opinion between the person and Committee as to how the estate should have been handled is not by itself a reason to support a Committee's discharge.

The PGT is liable for payments made out of an estate that were not mandated by court order if they were not reasonable in the circumstances. The existence of a court order mandating payments at a lower level would make voluntary higher payments unreasonable: see *Wood v. British Columbia (Public Trustee)*, (1986) 25 D.L.R. (4th) 356.

ABUSE AND NEGLECT

An adult might be experiencing – or vulnerable to experiencing - abuse, neglect or self-neglect. In situations where an adult is in need of support or assistance in order to prevent abuse or neglect, the following legislation applies: Part 3 of the Adult Guardianship Act [AGA]; sections 34 and 35 of the Power of Attorney Act [PAA]; section 31 of the Representation Agreement Act [RAA]; and the Public Guardian and Trustee Act [PGTA].

The law defines abuse, neglect and self-neglect to include acts and a failure to act. Refer to the Practical Guide to Abuse and Neglect Law in Canada for a summary of the law and practical guidelines of how to identify and respond to situations of abuse or neglect. This guide is produced by the Canadian Centre for Elder Law and available online at: <http://www.bcli.org/ccel/projects/practical-guide-elder-abuse-and-neglect-law-canada>.

A. Designated Agency

In British Columbia, if an older adult is experiencing – or particularly vulnerable to – abuse, neglect or self-neglect and is unable to access the necessary support or assistance on her own, anyone may notify a Designated Agency (DA). A Representative of the DA will then meet with the adult to decide on what steps can be taken. The DA is legally required to: involve the adult in decisions about how to seek support and assistance; provide the necessary support and assistance to prevent abuse or neglect; and respect the right for an adult with capacity to refuse support or assistance.

DAs include BC Community Living and each of the provincial Health Authorities (i.e. Vancouver Coastal Health, Interior Health, Fraser Health, Vancouver Health Authority and Northern Health Authority). For contact information, refer to section **I.D. Designated Agencies** in this chapter.

Where an adult is found to be in need of support or assistance, a DA may take any of the following courses of action:

- investigate whether abuse or neglect is happening
- provide assistance to obtain care, social support, or legal guidance

- assist in obtaining an appropriate Representative or guardian
- inform the Public Guardian and Trustee
- prepare and implement a support and assistance plan with the adult
- apply to the court for an order authorizing the provision of services

Legal professionals need to remember their responsibility to maintain professional conduct and client confidentiality with respect to their clients. There is not a mandatory requirement to report abuse, neglect or self-neglect. A report to a DA can be made anonymously.

Students should refer to the supervising lawyer and assess the situation with the client. You should make sure that the adult has access to all available resources. If the situation is an emergency, **call 9-1-1**. If the situation is **not** an emergency, but the older adult is in need of support and assistance to protect themselves, then you may need to contact a DA. For contact information, refer to section **I.D: Designated Agencies** in this chapter.

B. Pubic Guardian and Trustee

The Public Guardian and Trustee (PGT) has the statutory authority to investigate in situations where there appears to be financial abuse or neglect – particularly where the abuse or neglect is due to decisions made by Attorneys or Representatives. The statutory powers allow the PGT to:

- protect a person’s financial affairs and assets in urgent situations for up to seven days and can extend the freeze period;
- apply to court for a temporary guardianship order;
- ask the court for an order allowing access to information previously denied when undertaking an audit or investigation; and
- act as Representative, associate or substitute decision-maker or guardian for an adult where there is no one available to make necessary decisions.

Any person may notify the Public Guardian and Trustee where a Representative is:

- abusing or neglecting someone;
- failing to follow the instructions in the RA;
- incapable of acting as Representative;
- failing to fulfill the duties of a Representative; or
- otherwise failing to comply with the RA.

Any person can also make an objection to the PGT if there is a reason to believe that fraud, undue pressure or some other form of abuse or neglect is being or was used to induce an adult to make, change or revoke financial or legal document.

On receiving an objection, the PGT must promptly review the situation and may do one or more of the following:

- conduct an investigation
- apply to the court for an order confirming a change or revocation of the RA or cancelling part of a RA
- apply to the court for an order that the RA is not invalid
- recommend that someone else make a court application
- make a represent to a designated agency, requesting support and assistance in accordance with s. 46 of the Adult Guardianship Act [AGA].

- appoint a monitor
- authorize remuneration for a monitor
- take any other action considered necessary.

The Public Guardian and Trustee Act [PGTA] requires that the PGT regularly represent on service delivery and financial issues to the Attorney General. It also provides that the Trustee will be audited by the Auditor General annually, and will be able to call on the assistance of an advisory board that can give advice on service delivery matters. Students can find contact information for the Public Guardian and Trustee in section **I.C.:** **Resources** in this chapter.

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APPENDIX A: POWER OF ATTORNEY CHECK LIST

LSLAP'S SUPERVISING LAWYER **MUST** SIGN THIS FORM AND IT MUST ACCOMPANY THE POWER OF ATTORNEY FORM BEFORE THE PROGRAM SECRETARY WILL TYPE IT.

Client: _____
Donor's Name

Student: _____
Student's Name

- I met with the proposed Donor separate and apart from the proposed Attorney.
- I explained to the proposed Donor the risks and benefits of granting this Power of Attorney.
- In my opinion, the proposed Donor understood and appreciated the implications of creating this Power of Attorney.

NOTE: If attorney is present, student **MUST** inform Supervising Lawyer. _____

Supervising Lawyer: _____

APPENDIX B: POWER OF ATTORNEY SAMPLES

Provided courtesy of Nidus Personal Planning Resource Centre and Registry, www.nidus.ca.

**(Enduring) Power of Attorney
(Appointment of one attorney) with revoke clause**

This General Power of Attorney is given on [date].

By [name of donor] of [address]

I hereby revoke any and all Powers of Attorney at any time heretofore given by me.

I appoint the following person, [name of attorney] of [attorney's address], to be my attorney in accordance with the *Power of Attorney Act* and to do on my behalf anything that I can lawfully do by an attorney.

In accordance with the *Power of Attorney Act* I declare that this power of attorney may be exercised during any subsequent mental infirmity on my part.

(Donor's Signature)

WITNESSED BY:

(Signature of Witness)

(Print Name of Witness)

(Address of Witness)

**(Enduring) Power of Attorney
(Appointment of two attorneys) with revoke clause, acting separately**

This General Power of Attorney is given on [date].

By [name of donor] of [address]

I hereby revoke any and all Powers of Attorney at any time heretofore given by me.

I appoint the following persons, [name of attorney] of [attorney's address] and [name of attorney] of [attorney's address], who may act separately to be my attorneys in accordance with the *Power of Attorney Act* and to do on my behalf anything that I can lawfully do by an attorney.

In accordance with the *Power of Attorney Act* I declare that this power of attorney may be exercised during any subsequent mental infirmity on my part.

(Donor's Signature)

WITNESSED BY:

(Signature of Witness)

(Print Name of Witness)

(Address of Witness)

**(Enduring) Power of Attorney
(Appointment of two attorneys) with revoke clause, acting together**

This General Power of Attorney is given on [date].

By [name of donor] of [address]

I hereby revoke any and all Powers of Attorney at any time heretofore given by me.

I appoint the following persons, [name of attorney] of [attorney's address] and [name of attorney] of [attorney's address], who must act together to be my attorneys in accordance with the *Power of Attorney Act* and to do on my behalf anything that I can lawfully do by an attorney.

In accordance with the *Power of Attorney Act* I declare that this power of attorney may be exercised during any subsequent mental infirmity on my part.

(Donor's Signature)

WITNESSED BY:

(Signature of Witness)

(Print Name of Witness)

(Address of Witness)

APPENDIX C: DECLARATION

CANADA PROVINCE OF BRITISH) IN THE MATTER OF a Power of
COLUMBIA) Attorney granted by [name of donor]
) unto [name of attorney]
)

TO WIT:

DECLARATION

I, [name of attorney], of [full address of attorney including postal code], do solemnly declare that:-

1. I am the attorney appointed by the foregoing Power of Attorney.
2. At the time of such appointment, namely, on [insert date], I was of the full age of nineteen years.

AND I make this solemn Declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

[name of attorney]

DECLARED BEFORE ME at _____ in the Province of British Columbia,
this _____ day of _____, _____.

Commissioner for taking Affidavits
for British Columbia.____

APPENDIX D: AFFIDAVIT OF EXECUTION

**LAND TITLE ACT
FORM 2
(Sections 43(a) and 44(a))**

AFFIDAVIT OF WITNESS

I, _____, of _____, in British Columbia, make oath and say:

1. I was present and saw this instrument duly signed and executed by _____, the party(ies) to it, for the purposes named in it.
2. The instrument was executed at _____.
3. I know the party(ies), who is (are) 19 years old or more.
4. I am the subscribing witness to the instrument and am 16 years old or more.

Sworn before me at _____ in British Columbia,
this _____ day of _____, 20__.

A Notary Public in and for the Province of British Columbia
A Commissioner for taking Affidavits for British Columbia

APPENDIX E: NOTICE OF REVOCATION OF POWER

TO WHOM it may concern,

I, _____, the undersigned, hereby give notice that the Power of Attorney given to me by _____, on the [date], and registered [state particulars] authorizing [set out powers briefly], is hereby revoked and cancelled.

Dated this _____ day of _____, 20__.

[Signature]

*APPENDIX F: APPOINTMENT OF SUBSTITUTES UNDER AUTHORITY
CONTAINED IN POWER*

WHEREAS _____, of _____ duly made and executed under his or her hand and seal a Power of Attorney, dated the _____ day of _____, 20____, whereby he or she appointed me his or her attorney, for him or her and in his or her name to do the acts therein specified, with power from time to time to substitute any person or persons to act [under me, or] in my place, as attorney or attorneys in all matters aforesaid and from time to time every such substitution and appointment at pleasure to revoke:

NOW THEREFORE, I the said _____, by virtue and in execution of the authority in that behalf contained in the said Power of Attorney, do hereby appoint _____ of _____ and _____ of _____, and each of them, to be the attorneys and attorney jointly and severally of my said principal, _____, for him or her and in his or her name, to execute and perform all and every matters and things mentioned and contained in the said Power of Attorney to me, in the same manner and as fully and effectually as he or she, my said principal, or as I might or could have done if personally present, and as they, the attorneys, or either of them, might or could have done if they had been appointed the attorneys jointly and severally of my said principal in and by the said Power of Attorney, instead of me.

I, the said _____, hereby confirm and agree to confirm whatsoever the said attorneys jointly, or either of them separately, shall do, or cause to be done, by virtue of these presents.

IN WITNESS, etc. [include date]

SIGNED, SEALED, etc. [Signature]

[Here insert affidavit of execution, see **Form D**, above]

APPENDIX G: FORM OF BANK MANDATE

To _____ Bank, Ltd.

Please accept this letter as my formal authority to consider _____ until further notice is received from me, to be empowered on my behalf and in respect of my account and in my name:

1. *TO DRAW, SIGN AND ENDORSE CHEQUES NOTWITHSTANDING THAT THE PAYEE OF ANY SUCH CHEQUES MAY BE THE SAID _____ AND FURTHER NOTWITHSTANDING THAT UPON DEBITING SUCH CHEQUES TO MY ACCOUNT MY ACCOUNT SHALL BE OVERDRAWN TO A SUM NOT EXCEEDING \$ _____.*
2. To lodge and withdraw any security on my behalf or of mine and generally in all dealings with the said account to act as effectively as I myself can do and this authority shall be binding upon my personal Representatives in the event of my death so as to authorize any of the said _____ from the date of my death until the receipt by you of written notice of my death.

IN WITNESS, etc. [include date]

SIGNED, SEALED, etc.

[Signature]

[Here insert Affidavit of Execution, see **Appendix D**, above]

APPENDIX H: SPECIAL POWER OF ATTORNEY CLAUSES

Special clauses may be included in any of the general Power of Attorney forms to expand or delineate the power being conferred. Remember, powers granted under seal are very strictly construed, so a power under seal should have all the authority to be conferred specifically provided for. **If a special power of attorney clause is included, then the Power of Attorney will be construed to be limited to the precise powers detailed in the clause.**

1. General

a) *To Execute a Particular Instrument*

To sign, seal and deliver in my name, and as my act and deed, a certain instrument bearing date on or about the _____ day of _____, intended to [convey to _____ of _____ all (describe land), for the consideration of 1 _____ dollars, and to receive the purchase money thereof for me and on my behalf].

b) *General Powers*

To act generally as my attorney at _____, in relation to the premises and other matters in which I am interested or concerned, and on my behalf to execute all necessary instruments, and to do all such acts, as fully and effectually in every respect as I myself could do if personally present.

c) *To Provide for Spouse*

Without limiting the generality of the foregoing, my attorney may make payments out of my estate for the support, maintenance, comfort, and general well-being of my spouse, [name], as my attorney thinks appropriate. When exercising this discretion, it is my wish that my attorney consider my financial circumstances and anticipated needs and the circumstances of my family.

d) *Former Powers Not Affected*

Provided that these presents or the powers hereby given shall in no ways extend or be deemed or construed to extend, to revoke or make void any former or other Power of Attorney by me at any time heretofore given to the attorney or any person or persons whomsoever for any distinct or other purpose, but such other powers shall still remain and be of the same authority, validity, force and effect as if these presents had not been made.

e) *Confirmation of Acts of Attorney*

I, the said _____, hereby agree and covenant for myself, my heirs, executors and administrators, to ratify and confirm whatsoever my attorney [or his or her lawful attorney or attorneys or substitute or substitutes] shall lawfully do or cause to be done in the premises by virtue of these presents.

f) *To Give Receipts and Discharges*

Upon recovery or receipt of all and every sum or sums of money, goods, chattels, effects or things due, owing, payable or belonging to me, to sign, seal, execute and deliver such goods and sufficient receipts, releases, certificates, re-conveyances, surrenders, assignments or other good and effectual discharges as may be requisite.

g) *To Submit to Arbitration*

In case of any difference or dispute with any person concerning any of the matters herein [or as may be desired] to submit any such differences and disputes to arbitration in such manner as my said attorney shall think fit, and sign, seal and execute any instruments for the purpose of giving effect to such submission.

b) *To Substitute Attorneys*

I empower my attorney to substitute and appoint, from time to time, an attorney or attorneys under him or her, with equal [or more limited] powers, and such substitute or substitutes to appoint or remove at pleasure.

i) *To Substitute Attorneys (Alternate Form)*

I hereby grant my attorney full power and authority to substitute and appoint [from time to time] in his or her place and stead [or under him or her] [on such terms and at such salary as he or she shall think fit] one or more attorney or attorneys to exercise for me as my attorney or attorneys any or all the powers and authorities hereby conferred, and to revoke any such appointment from time to time and to substitute or appoint any other or others in the place of such attorney or attorneys as he or she, my attorney, shall from time to time think fit.

j) *To Employ Agents and Servants*

To appoint, engage and employ any agents, servants or other persons, at such salary or wages or for such compensation as my attorney may think proper, and such persons from time to time to dismiss or discharge, and others to appoint, engage or employ in their stead, as my attorney may deem necessary.

2. **Death or Incapacity of Attorney**

a) *Appointment of Alternate Attorney (Short Form)*

If my attorney shall die or become incapable of acting as my attorney, I hereby appoint _____ of _____ my attorney in place of _____, with power to exercise all of the powers and authority hereinbefore conferred on my attorney, in as full and ample a manner in all respects as if the name of the substituted attorney had been inserted herein instead of my attorney _____.

b) *Appointment of Alternate Attorney (Long Form)*

In the event of the said _____ [first attorney] dying or becoming incapable of acting, or refusing to act, or becoming bankrupt, during my absence, I hereby appoint _____ [second attorney] of _____, my attorney from and immediately after the happening of any of the said events during my absence to act in and manage all my affairs in the same or like manner in all respects as the [first attorney] could have done, and I accordingly grant to and vest in the said [second attorney], as from the date of such event, all and every the same or the like powers and authorities in or concerning the premises in all things as are herein given to or vested in the said [first attorney], and as if the same of the said [second attorney] had, throughout these presents, been inserted instead of the name of the said [first attorney], and I hereby undertake to ratify whatsoever the said _____ [second attorney] (or his or her attorney or attorneys) shall lawfully do or cause to be done in the premises by virtue of these presents.

c) *Appointment of Alternate Attorney on Death of Attorney: Principal Abroad*

In the event of my said attorney dying while I am living out of the country, I hereby constitute _____ of _____ my attorney for me and in my name, after the decease of the first attorney, and in my name, and as my act and Deed, to make, sign, seal, execute, and deliver all such acts, Deeds, conveyances, assurances, matters, and things whatsoever, as the said first attorney is hereby authorized to do or perform, and I hereby grant and vest the same powers and authorities in the said second attorney in as full and ample a manner, to all intents and purposes, as by virtue of these presents are hereinbefore granted unto and vested in the said first attorney, and I hereby ratify and confirm all and whatsoever my said attorneys, or either of them, shall lawfully do or cause to be done in the premises.

3. Death of Principal

a) Attorney Continuing to Act

In the event of my death, this Power of Attorney shall, as to any matter which may be done after my death by my said attorneys, or any or either of them, in pursuance hereof, be as binding upon my executors and administrators as it would have been upon me if I were alive; provided that my said attorneys or attorney had not, previously to the doing of any such matter, received reliable information of my death, so as to effectually inform them that their authority hereunder had ceased.

4. Duration of Power

a) "Springing" from Incapacity

This power of attorney is subject to the following conditions and restrictions:
This Power of Attorney shall not be used unless two doctors have provided letters stating that I am either physically or mentally incapable of managing my own affairs.

b) Permanently Irrevocable

In consideration of the obligations assumed by my attorney, and his or her interest in the execution of the powers herein conferred, I hereby vest my attorney irrevocably with the said powers, and forever renounce all right to revoke any of my attorney's powers, or to appoint any other person to execute them, or personally to perform any of the acts my attorney is hereby authorized to perform.

c) Irrevocable for Fixed Period

I declare that the powers herein shall be irrevocable for the period of _____ [months] from the date hereof.

d) Irrevocable until Notice Given

The company may continue to deal with the said attorney under this power until notice of the revocation hereof has been given in writing to the manager of the company at the office where my account is kept, and until such notice in writing has been received the acts of the said attorney hereunder with the company shall be binding on me.

5. Personal Property

a) To Prosecute and Defend Actions

To commence, prosecute and defend all actions or other legal proceedings relating to any of the matters aforesaid, or any other matters in which I am, or may hereinafter be, interested or concerned; and also, if it seems to my attorney to be desirable, to compromise, refer to arbitration, or submit to judgment in any such action or proceeding.

b) To Exercise Legal Remedies

In case of neglect, refusal or delay on the part of any person to make and render a just, true and full account, payment, delivery or satisfaction in the premises, to compel him or her or them to do so, and for that purpose to make such claims and demands [arrests, seizures, levies, attachments, distrains and sequestrations] or to commence and prosecute to judgment and execution such actions as my attorney shall think fit; also to appear before all or any judges, magistrates or other officers of any court, and then and there plead, claim, defend and Representatively in all matters and causes concerning the premises; and also to exercise and execute all powers of

sale or foreclosure, and all other powers and authorities vested in me by any mortgage belonging to me as mortgagee.

c) To Settle Claims and Disputes

To settle, compromise, or submit to arbitration any accounts, debts, claims, demands, disputes and matters touching any of the matters aforesaid, or any other matters now subsisting or that may hereinafter arise between me and any other person or persons, or between my attorney and any other persons.

d) To Compromise Debts Owning to Principal

To compound, compromise and accept part in lieu of and in satisfaction for the payment of the whole of any debt or sum of money now or hereinafter owing to me, or to grant an extension of time for the payment thereof, either with or without taking security, or otherwise to act in respect thereof as to my attorney shall appear most expedient.

e) To Pay and Compromise Debts of Principal

To enter into any agreement, compromise or arrangement with any or every person to whom I am now or shall hereinafter be indebted touching the payment or satisfaction of his or her demand, or any part thereof, and generally to do all lawful acts requisite for effecting such purpose.

f) To Receive a Particular Sum of Money

To receive from _____ of _____ the sum of _____ dollars [being the price agreed to be paid by him or her to me for _____, and interest that may be due thereon], and to give an effectual receipt and discharge therefor.

g) To Recover a Particular Debt

To demand, sue for, recover and receive from _____ of _____, the sum of _____ dollars owing from him or her to me for _____, and all interest due in respect thereof, and to give proper receipts and discharges therefor.

h) To Receive and Recover Debts and Personal Property

To demand, sue for, recover and receive all debts, moneys, securities for money, legacies, goods, chattels, effects and things whatsoever which now are, or shall hereinafter be, due, owing, payable or belonging to me from any persons whatsoever, and in my name to give effectual receipts and discharges therefor.

i) To Deal with a Bank

To negotiate with, deposit with or transfer to The _____ Bank [but for credit of the account of the undersigned only] all or any bills of exchange, promissory notes, cheques, or orders for the payment of money and other negotiable paper, and for the said purpose to endorse them or any of them on behalf of the undersigned; also to arrange, settle, balance and certify all books and accounts between the undersigned and the bank, and to receive all paid cheques and vouchers, and to sign the bank's form of settlement of balances and release; and generally, for and in the name of the undersigned, to transact with the bank any business that may be necessary in the premises. The bank may continue to deal with the attorney under this power until notice of the revocation thereof has been given in writing to the manager or acting manager of the branch of the bank at which the account of the undersigned is kept, and until such notice in writing has been given the acts of the attorney hereunder with the bank shall be binding on the undersigned.

instrument having first truly)
distinctly and audibly read over to) [Signature of AB]
him, when he or she appeared to understand)
it and signed his or her name in the)
presence of _____.)

c) *By Committee of a Mental Incompetent*

IN WITNESS WHEREOF the said _____ as Committee of the Estate and in the name and on behalf of the said [incompetent] has subscribed the name and set the seal of the said [incompetent].

SIGNED, SEALED and delivered)
in the presence of _____.) SEAL
By [signature of Committee]
His or her Committee

d) *Statutory Declaration of Attestation*

CANADA) IN THE MATTER OF
PROVINCE OF)
COUNTY [or DISTRICT] OF)

I, _____, of _____, in the [county] of _____, [occupation], do solemnly and sincerely declare:

1. That I was present with ABC of the _____ of _____, [occupation], on the _____ day of _____, and did see the said ABC, lately called or known by the name of AB, residing in _____, of _____, [occupation], sign, seal, and as his or her act and Deed in due form of law deliver, the Deed or instrument hereunto annexed and marked with the letter "A," and bearing date the _____ day of _____.

2. That the name "ABC", set and subscribed to the said Deed or instrument as the name of the person executing it, is in the proper handwriting of the said ABC, and the names of the persons attesting the due execution thereof are in the respective proper handwritings of EF and me this declarant.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the Canada Evidence Act.

APPENDIX I: S. 7 REPRESENTATIVE AGREEMENT SAMPLES

Provided courtesy of Nidus Personal Planning Resource Centre and Registry, www.nidus.ca.

**Section 7 Representative Agreement
[For Health and Personal Care]
[One Representative; One Alternative Representative]**

My name is [name]. I was born in [year]. I live at [address and telephone number].

I appoint my [relationship], [name], to be my Representative.

I authorize my Representative to assist me or to manage or make decisions on my behalf for minor and major health care as defined in the *Health Care Consent and Care Facility Admission Act*, and for personal care matters.

As alternate Representative I appoint my [relationship], [name]. [Alt Representative name] will act if [Representative name] is unwilling or unable to act or continue to act as my Representative due to illness, death, resignation or other circumstances. Confirmation that [Representative name] is unable or unwilling to act will be verified in a letter signed by either the Representative or the alternate.

This Representative Agreement is effective immediately.

I signed this Representative Agreement on _____ in the presence of two witnesses named below.

Signature of adult

We are the two witnesses to the Representative Agreement of [name]. We signed in the presence of [name] and each other on the date shown above.

Print name _____ Print name _____

Signature of witness Signature of witness

Signed by the Representative and alternate Representative:

Print name _____ Print name _____

Signature of Representative Signature of alternate Representative

Attached: Certificate of Witnesses; Certificate of Representative or Alternate Representative.

Section 7 Representative Agreement

[For Health and Personal Care, and Routine Financial Management, and Legal Case Management]

[One Representative; One Alternative Representative; One Monitor]

My name is [name]. I was born in [year]. I live at [address and telephone number].

I appoint my [relationship], [name], to be my Representative.

I authorize my Representative to assist me or to manage or make decisions on my behalf for minor and major health care as defined in the *Health Care Consent and Care Facility Admission Act*, personal care matters, routine management of my financial affairs as defined in the regulations in effect on the date this Representative Agreement was made, and obtaining legal services and instructing counsel to begin proceedings (except divorce) or to continue, compromise, defend or settle any legal proceedings on my behalf.

As alternate Representative I appoint my [relationship], [name]. [Alt Representative name] will act if [Representative name] is unwilling or unable to act or continue to act as my Representative due to illness, death, resignation or other circumstances. Confirmation that [Representative name] is unable or unwilling to act will be verified in a letter signed by the monitor.

I appoint my [relationship] [name] as monitor.

This Representative Agreement is effective immediately.

I signed this Representative Agreement on _____ in the presence of two witnesses named below.

Signature of adult

We are the two witnesses to the Representative Agreement of [name]. We signed in the presence of [name] and each other on the date shown above.

Print name _____

Print name _____

Signature of witness

Signature of witness

Signed by the Representative and alternate Representative:

Print name _____

Print name _____

Signature of Representative

Signature of alternate Representative

Attached: Certificate of Witnesses; Certificate of Representative or Alternate Representative; Certificate of Monitor.

APPENDIX J: DEFINITION: ROUTINE MANAGEMENT OF ADULT'S FINANCIAL AFFAIRS

from the Representative Agreement Act Regulations - September 1, 2001

(1) For the purposes of section 7 (1) (b) of the Act, the following activities constitute "routine management of the adult's financial affairs":

- (a) paying the adult's bills;
- (b) receiving the adult's pension, income and other money;
- (c) depositing the adult's pension, income and other money in the adult's accounts;
- (d) opening accounts in the adult's name at financial institutions;
- (e) withdrawing money from, transferring money between or closing the adult's accounts;
- (f) receiving and confirming statements of account, passbooks or notices from a financial institution for the purpose of reconciling the adult's accounts;
- (g) signing, endorsing, stopping payment on, negotiating, cashing or otherwise dealing with cheques, bank drafts and other negotiable instruments on the adult's behalf;
- (h) renewing or refinancing, on the adult's behalf, with the same or another lender, a loan, including a mortgage, if
 - (i) the principal does not exceed the amount outstanding on the loan at the time of the renewal or refinancing, and
 - (ii) in case of a mortgage, no new registration is made in the land title office respecting the renewal or refinancing;
- (i) making payment on the adult's behalf on a loan, including a mortgage, that
 - (i) exists at the time the Representative Agreement comes into effect, or
 - (ii) is a renewal or refinancing under paragraph (h) of a loan referred to in that paragraph;
- (j) taking steps under the Land Tax Deferral Act for deferral of property taxes on the adult's home;
- (k) taking steps to obtain benefits or entitlements for the adult, including financial benefits or entitlements;
- (l) purchasing, renewing or canceling household, motor vehicle or other insurance on the adult's behalf, other than purchasing a new life insurance policy on the adult's life;
- (m) purchasing goods and services for the adult that are consistent with the adult's means and lifestyle;

- (n) obtaining accommodation for the adult other than by the purchase of real property;
- (o) selling any of the adult's personal or household effects, including a motor vehicle;
- (p) establishing an RRSP for the adult;
- (q) making contributions to the adult's RRSP and RPP;
- (r) converting the adult's RRSP to a RRIF or annuity and creating a beneficiary designation in respect of the RRIF or annuity that is consistent with the beneficiary designation made by the adult in respect of that RRSP;
- (s) making, in the manner provided in the Trustee Act, any investment that a trustee is authorized to make under that Act;
- (t) disposing of the adult's investments;
- (u) exercising any voting rights, share options or other rights or options relating to shares held by the adult;
- (v) making donations on the adult's behalf to registered charities, but only if
 - (i) this is consistent with the adult's financial means at the time of the donation and with the adult's past practices, and
 - (ii) the total amount donated in any year does not exceed 3% of the adult's taxable income for that year;
- (w) in relation to income tax,
 - (i) completing and submitting the adult's returns,
 - (ii) dealing, on the adult's behalf, with assessments, reassessments, additional assessments and all related matters, and
 - (iii) subject to the Income Tax Act and the Income Tax Act (Canada), signing, on the adult's behalf, all documents, including consents, concerning anything referred to in subparagraphs (i) and (ii);
- (x) safekeeping the adult's documents and property;
- (y) leasing a safety deposit box for the adult, entering the adult's safety deposit box, removing its contents and surrendering the box;
- (z) redirecting the adult's mail;
- (aa) doing anything that is
 - (i) consequential or incidental to performing an activity described in paragraphs (a) to (aa), and
 - (ii) necessary or advisable to protect the interests and enforce the rights of the adult in relation to any matter arising out of the performance of that activity.

(2) For greater certainty, the activities that are under subsection (1) constitute "routine management of the adult's financial affairs" do not include any of the following:

- (a) using or renewing the adult's credit card or line of credit or obtaining a credit card or line of credit for the adult;
 - (b) subject to subsection (1) (h), instituting on the adult's behalf a new loan, including a mortgage;
 - (c) purchasing or disposing of real property on the adult's behalf;
 - (d) on the adult's behalf, guaranteeing a loan, posting security or indemnifying a third party;
 - (e) lending the adult's personal property or, subject to subsection (1) (v), disposing of it by gift;
 - (f) on the adult's behalf, revoking or amending a beneficiary designation or, subject to subsection (1) (r), creating a new beneficiary designation;
 - (g) acting, on the adult's behalf, as director or officer of a company.
- Definition of Routine Management of Adult's Financial Affairs
from the Representative Agreement Act Regulations, September 2001

APPENDIX K: CERTIFICATE OF REPRESENTATIVE OR ALTERNATE REPRESENTATIVE

Form 1

Representative Agreement Act

Section 5(4), 6(2)

(This certificate to be completed by each Representative and alternate Representative)

I, _____, of _____,
(name of Representative or alternate Representative, (address)
including name of trust company or credit union)

(city) (province) (postal code)

_____ Date of Birth: ____/____/____
(telephone) (month) (day) (year)

certify that:

I am named as Representative or alternate Representative in the Representative Agreement

made on _____ by
(date)

_____, of _____,
(name of person) (address)

(city) (province) (postal code)

I was 19 years of age or older on the date that I signed the Representative Agreement referred to in this certificate.

I am not a witness to the Representative Agreement.

I understand and will comply with the duties and responsibilities of a Representative as set out in s. 16 of the *Representative Agreement Act* and described on the reverse of this certificate.

(signature of Representative, alternate Representative, or (date)
authorized signature of a trust company or credit union)

APPENDIX L: CERTIFICATE OF MONITOR

Form 3

Representative Agreement Act

Section 12(3)

(This certificate to be completed by the person named as monitor in a Representative Agreement)

I, _____, of _____,
(name of monitor) (address)

(city) (province) (postal code) (telephone)

certify that I am the monitor named in the Representative Agreement made by

_____ on _____.
(name of adult making the agreement) (date)

I was 19 years of age or older on the date the Representative Agreement referred to in this certificate was signed. I understand and am willing and able to perform the duties and exercise the powers of a monitor set out in s. 20 of the *Representative Agreement Act*.

I have read and understand s. 30 of the *Representative Agreement Act* and have no reason to make an objection at this time.

(signature of monitor)

(date)

APPENDIX M: CERTIFICATE OF PERSON SIGNING FOR AN ADULT

Form 4
Representative Agreement Act
Section 13(4)(d)

(THIS CERTIFICATE TO BE COMPLETED BY THE PERSON WHO SIGNS A REPRESENTATIVE AGREEMENT FOR THE ADULT MAKING THE AGREEMENT WHO IS PHYSICALLY INCAPABLE OF SIGNING)

I, _____, of _____,
(name of monitor) (address)

_____,
(city) (province) (postal code) (telephone)

certify that I signed a Representative Agreement dated _____ on behalf of
(date)

_____, of _____
(name of adult) (address of adult)

_____,
(city) (province) (postal code)

The adult making the agreement was present when I signed the agreement on his or her behalf and directed me to sign because he or she was physically incapable of signing.

I understand the type of communication used by the adult when he or she directed me to sign the agreement.

I am not a Representative or alternate Representative or witness to the signing of the agreement.

I was 19 years of age or older on the date I signed the Representative Agreement.

(signature of person signing for the adult)

(date)

APPENDIX N: CERTIFICATE OF WITNESS

Form 5
Representative Agreement Act

Section 9, 13

(THIS CERTIFICATE TO BE COMPLETED BY THE PEOPLE WITNESSING THE SIGNING OF A REPRESENTATIVE AGREEMENT)

I, _____, of _____,
(name of witness #1) (address)

(city) (province) (postal code) (telephone)

(i) AND

I, _____, of _____,
(name of witness #2) (address)

(city) (province) (postal code) (telephone)

certify that we were present together on _____ when

_____ and/or _____ and/or

_____ and/or _____ and/or

signed the Representative Agreement made by _____ dated _____.

The signature of each witness below also certifies the following:

- I am not named in the agreement as a Representative or alternate Representative;
I am not a spouse, child or parent of anyone named in the agreement as a Representative or alternate Representative;
I am not an employee or agent of a person named in the agreement as a Representative or alternate Representative;
I was 19 years of age or older on the date we witnessed the signing of the Representative Agreement; and
I understand the type of communication used by the adult.

I have no reason to object to the making of this Representative Agreement at this time.

(signature of witness #1)

(date)

(signature of witness #2)

(date)

Notice to Witnesses:

- 1 Grounds for Objecting to the Making of an Agreement
Section 30 of the Representative Agreement Act provides for a number of reasons to object to the making and use of a Representative agreement.
2 To Make an Objection
If you believe that you have grounds to make an objection at this time, you should:
(a) not witness the agreement,
(b) not execute this certificate,
(c) represent your objection to the Public Guardian and Trustee.

**APPENDIX O: ENHANCED REPRESENTATIVE AGREEMENT FOR
HEALTH CARE**

Representative Agreement Act

Section 9

This Document made by [name] at _____, British Columbia, this ____ day of _____, 2004.

- 1.1 (a) I appoint [name] to be my Representative in accordance with the *Representative Agreement Act*, R.S.B.C. 1993, c. 67, to act as my Representative to make health care decisions for me and, if applicable, decisions about my minor children or other persons cared for and supported by me, if I am unable to do so due to mental incapacity.

OR

any persons cared for and supported by me, if I am unable to do so due to mental incapacity.

[If joint Representatives] I assign each one of them authority to make health care decisions for me.

- (b) If [RepresentativeName] should at any time be unable or unwilling to act or continue to act, I appoint [Alt Representative 1] instead.

- (c) [RepresentativeName] and [Alt Representative 1] should at any time be unable or unwilling to act to act or continue to act, I appoint [Alt Representative 2] to act instead.

- (d) My alternate Representative(s) shall [shall not] not be required to provide evidence of the disqualification of my first named Representative(s) before acting on my behalf.

- (e) I refer to my Representative(s) hereunder, whether primary or alternate, as my "Representative"

- 1.2 A monitor is not required.

OR

- 1.3 I appoint [Monitor name] as monitor.

- 1.4 My Representative shall have full and unlimited authority during my incapacity to, at discretion, give or refuse consents or make decisions respecting my health care including, without limiting the generality of the foregoing, the authority to do any or all of the following, even if I then object:

- (a) make decisions about major health care, minor health care and all dental care matters;
- (b) make decisions about where and with whom I reside;

- (c) physically restrain, move or manage me, or have me physically restrained, moved or managed;
- (d) give consent on my behalf to any type of health care including, without limiting the generality of the foregoing, CPR, fibrillation, gastrointestinal feeding, intravenous feeding, or connection to life support machinery;
- (e) to refuse consent on my behalf to specific types of medical care, including life support care or treatment;
- (f) to give consent on my behalf to the kinds of health care prescribed under s. 34(2)(f) of the *Health Care (Consent) and Care Facility (Admission) Act*;
- (g) accept a facility care proposal under the *Health Care (Consent) and Care Facility (Admission) Act* for my admission to any kind of care facility;

and, if applicable, authority to make arrangements for the care, education and financial support of

my minor children, my spouse, or any other persons who is cared for and supported by me at the time of mental incapacity.

OR

any persons who is cared for and supported by me at the time of mental incapacity.

I direct that [name] shall act as guardian of my minor children and have the care, custody and control of them, in the event of my mental incapacity, should my spouse be unable so to act, and the said [name] shall have all my rights, powers and duties, to the extent that the law permits, respecting my minor children.

1.5 The following words have the following meanings in this Agreement:

- (a) "health care" means anything that is done for a therapeutic, preventative, palliative, cosmetic, or other purpose related to health, and includes:
 - (i) a course of health care, for example, a series of immunizations or dialysis treatments or a course of chemotherapy; and
 - (ii) participation in a medical research program approved by an ethics Committee designated by regulation;
- (b) "major health care" means:
 - (i) major surgery;
 - (ii) any treatment involving a general anesthetic;
 - (iii) major diagnostic or investigative procedures;

- (iv) radiation therapy;
- (v) intravenous chemotherapy;
- (vi) kidney dialysis;
- (vii) electroconvulsive therapy;
- (viii) laser surgery; and
- (ix) any other health care designated by Regulation to or defined by the *Health Care (Consent) and Care Facility (Admission) Act*, as major health care;

(c) "minor health care" means any health care that is not major health care, and includes:

- (i) routine tests to determine if health care is necessary; and
- (ii) routine dental treatment that prevents or treats a condition or injury caused by disease or trauma, for example:
 - A. cavity fillings and extractions done with or without a local anesthetic; and
 - B. oral hygiene inspections.

1.6 The Representative has the authority to do all of the following:

- (a) request, review, and receive any information, oral or written, regarding my physical or mental health, including medical and hospital records;
- (b) execute on my behalf any documents that may be required in order to obtain this information; and
- (c) consent to the disclosure of this information.

1.7 The Representative may retain the services of qualified persons to assist the Representative to do anything the Representative is authorized to do.

1.8 Any costs incurred on my behalf, including services rendered under **[Insert Paragraph No. concerning Representative retaining services]** of this Agreement, arising out of the performance of the Representative's duties are my debts and will be paid by me.

1.9 I indemnify the Representative for any loss or cost incurred by the Representative arising out of the performance of the Representative's duties under this Agreement.

- 1.10 Subject to a specific contrary provision in the Act, when helping me make decisions or when making decisions on my behalf:
- (a) the Representative need only consult with me to the extent that the Representative considers to be reasonable or appropriate in the circumstances, to determine my current wishes;
 - (b) the Representative need only comply with those wishes if, in the Representative's opinion, it is reasonable and appropriate to do so;
 - (c) if the Representative cannot determine my then current wishes or if it is not reasonable to comply with those current wishes, the Representative must comply with any instructions or wishes set out in this Agreement;
 - (d) if my wishes are not known to the Representative, the Representative must act based on what the Representative considers to be in my best interests.
- 1.11 When deciding whether it is in my best interests to give, refuse, or revoke substitute consent, the Representative must consider whether:
- (a) my condition or well-being is likely to be improved by the proposed health care;
 - (b) my condition or well-being is likely to improve without the proposed health care;
 - (c) the benefit I am expected to obtain from the proposed health care is greater than the risk of harm; and
 - (d) a less restrictive or less intrusive form of health care would be as beneficial as the proposed health care.
- 1.12 My Representative shall be entitled to claim and be paid the same remuneration for acting as my Representative that a trustee would be allowed to charge under the *Trustee Act* of RC.
- 1.13 I have reviewed the nature, extent and scope of this Health Care Authorization with a member of the Law Society of British Columbia. **[INCLUDE THIS PARAGRAPH ONLY IF REPRESENTATIVEs. ARE THE SAME IN THE POWER OF ATTORNEY – IS NOT, DELETE IT]** This authorization is to be read and used in conjunction with any Power of Attorney I have given, with the intent that the documents together shall give the person(s) named authority to deal with all my health care, personal care, financial, legal and other matters on my behalf if I am unable to do so due to mental incapacity.
- 1.14 In accordance with the *Representative Agreement Act* I declare that this Representative Agreement becomes effective upon, and may be exercised during, my subsequent mental incapacity. Such incapacity shall be confirmed by statutory declaration given by a physician or psychiatrist licensed to practice medicine in British Columbia.

WRITTEN WISHES REGARDING END OF LIFE
“LIVING WILL”

- 2.1 Death is as much a reality as birth, growth, maturity and old age - it is one certainty in life. If the time comes when I, [name], can no longer take part in the decisions for my own future, let this statement stand as an expression of my wishes while I am still of sound mind. If the situation should arise in which there is no reasonable expectation of my recovery from physical or mental disability, I wish to be allowed to die naturally and not be kept alive by artificial means. I therefore ask that medication be mercifully administered to me to alleviate suffering even though this may hasten the moment of death. Throughout, I wish adequate pain medication to manage my pain, including the use of opiates if appropriate.
- 2.2 This statement is intended to supplement any specific directions or directives I have given.

NOMINATION OF COMMITTEE

- 3.1 Pursuant to Section 9 of the *Patients Property Act* now in effect I confirm that I nominate, constitute and appoint, as Committee of my estate of my person, in the event that I become mentally incompetent for any reason(s) whatsoever, [RepresentativeName]. In the event [RepresentativeName] is unable or unwilling to act, or continue to act, as Committee of my estate and my person, I HEREBY nominate, constitute and appoint [Alt Representative1/2] in (his/her) place.

OR

- 63.2 Pursuant to Section 9 of the *Patients Property Act* now in effect I confirm that I nominate, constitute and appoint, as Committees of my estate and of my person, in the event that I become mentally incompetent for any reason(s) whatsoever, [RepresentativeName], and [Alt Representative 1/2] In the event either [RepresentativeName] or [Alt Representative 1/2] is unable or unwilling to act, or continue to act, as Committee of my estate and my person, **I HEREBY** nominate, constitute and appoint [Alt Representative 1/2] in (his/her) place.

I HAVE SIGNED THIS DOCUMENT IN THE PRESENCE OF THE WITNESSES NAMED:

(CLIENT NAME)

Signed by the said [CLIENT NAME] in my presence, who, at the request of the said [CLIENT NAME], and in (his/her) presence, have hereunto signed my name as witness:

Signature

Print Name

Print Address

Print Occupation

ACCEPTANCE BY REPRESENTATIVE

I HEREBY AGREE TO ACT AS REPRESENTATIVE:

[INSERT NAME OF 1ST REPRESENTATIVE]

ACCEPTANCE BY 1ST ALTERNATE REPRESENTATIVE

I HEREBY AGREE TO ACT AS 1ST ALTERNATE REPRESENTATIVE:

[INSERT NAME OF 1ST ALTERNATE REPRESENTATIVE]

ACCEPTANCE BY MONITOR

I HEREBY AGREE TO ACT AS MONITOR:

[INSERT NAME OF MONITOR]

APPENDIX P: CERTIFICATE OF PERSON CONSULTED ABOUT A REPRESENTATIVE AGREEMENT

Form 2
Representative Agreement Act
Section 9(2)(b), 12(1.1)(a) and 27(1)(b)

I, _____, of _____,
(name of person consulted) (address of person consulted)

_____,
(city) (province) (postal code) (telephone)

certify that I am a member in good standing of the Law Society of British Columbia and that I was consulted by _____, of _____,
(name of adult) (address of adult)

_____,
(city) (province) (postal code)

(check one)
 regarding the making of an agreement
 regarding a change to an agreement

dated _____ made by the above named adult under section 9 of the *Representative Agreement Act*.

The consultation took place on: _____ at _____.
(date) (place)

I explained the provisions of the Representative Agreement to the adult making or changing the agreement, and he or she appeared to understand the nature of the authority given to his or her Representative(s) and the effect of such authority.

(signature of person consulted) (date)