

Submission to
MINISTRY OF ATTORNEY GENERAL OF
BRITISH COLUMBIA

***ADULT GUARDIANSHIP AND PLANNING STATUTES
AMENDMENT ACT, S.B.C. 2007, C. 34 (BILL 29):***

**CONSULTATION
on
REGULATIONS**

Issued by:

**Canadian Bar Association
British Columbia Branch**

Bill 29 Special Committee

and the

CBABC Wills and Trusts Vancouver Section

December 15, 2008

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PREFACE

The Canadian Bar Association nationally represents over 38,000 members and the British Columbia Branch (the “CBABC”) itself has over 6,300 members. Its members practise law in many different areas and the CBABC has established 69 different Sections to provide a focus for lawyers who practise in similar areas to participate in continuing legal education, research and law reform. The CBABC also establishes special committees from time to time to deal with issues of interest to the CBABC.

The CBABC Bill 29 Special Committee was created in order to provide these submissions and recommendations (the “Special Committee”). The CBABC Wills and Trusts Vancouver Section also participated in the consultations.

The comments expressed in this submission reflect the views of the Special Committee and the Wills and Trusts Vancouver Section only and are not necessarily the views of the CBABC as a whole. Where questions or issues set out in this consultation are not considered by the Special Committee or the Wills and Trusts Vancouver Section, this does not mean that the Special Committee or the Wills and Trusts Vancouver Section, either accepts or rejects these matters, but that the Special Committee or the Wills and Trusts Vancouver Section has no comment on these matters at this time.

For the Special Committee the following members participated:

- Rosario Cateno (Tino) Di Bella, Chair, Legislation and Law Reform Committee;
- Mary B. Hamilton;
- Kirsten Jenkins; and
- Carmen S. Thériault.

For the Wills and Trusts Vancouver Section, the following members participated:

- Shelley A. Bentley, Chair;
- Sherri A. Robinson, Legislative Liaison;
- Emma A. McArthur; and
- Richard M. Wenner.

SUBMISSION

BACKGROUND

In 2007, the Legislative Assembly passed the *Adult Guardianship And Planning Statutes Amendment Act*, S.B.C. 2007, c. 34 (Bill 29). Bill 29 comes into force by future regulation.¹

ATTORNEY GENERAL CONSULTATION

On November 14, 2008, the Strategic Planning and Legislation Office of the Ministry of Attorney General posted on its website drafts of regulations pursuant to Bill 29 for consultation with the profession and the public².

These consultations drafts are:

Adult Guardianship

- Incapability Assessments Regulation;
- Adult Guardianship Informational Material;
- Guardianship Plans:
 - Plan for Guardianship: Personal Guardian;
 - Plan for Guardianship: Property Guardian;
 - Affidavit of Proposed Guardian;

¹ Section 112.

² See www.ag.gov.bc.ca/legislation/current_Consultations.htm.

- Affidavit of Proposed Guardian: Financial Institution;
- Adult Guardianship Regulation;

Incapacity Planning Instruments

- Health Care Consent Regulation;
- Power of Attorney Regulation;
- Representation Agreement Regulation;

Incapacity Planning Forms

- Advance Directive;
- Section 9 Representation Agreement;
- Combined Advance Directive and Section 9 Representation Agreement;
- Section 7 Representation Agreement; and
- Enduring Power of Attorney.

The Attorney General's deadline for comments was December 15, 2008.

SPECIAL COMMITTEE RESPONSE

In response to the consultation drafts, the CBABC established the Special Committee to provide submissions and recommendations to the Attorney General.

The Wills and Trusts Vancouver Section endorses the submissions and recommendations of the Special Committee.

Adult Guardianship Informational Material

Regarding the adult guardianship information material, the Special Committee recommends that this material be amended to:

- replace references to “judge” with “Supreme Court”;
- add references regarding the right to be represented by a lawyer;
- clarify that the reference to being “incapable” is “mentally incapable”; and
- clarify that the Lawyer Referral Service is the Lawyer Referral Service of the British Columbia Branch of the Canadian Bar Association.

A copy of this material with these recommended changes is attached as an appendix to these submissions.

Incapacity Planning Forms

The Special Committee focussed its review on the incapacity planning forms. A copy of each form as recommended by the Special Committee is attached as an appendix to these submissions.

As a general comment, the Special Committee recommends that each incapacity planning form have a notation under the title that they are not prescribed forms. The Special Committee recommends that the notation be: "The use of this form is voluntary."

Advance Directive

The Special Committee reviewed the advance directive form.

2. Revoking all previous Advance Directives

Regarding section 2 which revokes all previous Advance Directives, the Special Committee recommends that the new section 19.6 of the new Part 2.1 (Advanced Directives) under the *Health Care (Consent) and Care Facility (Admission) Act*, R.S.B.C. 1996, c. 181 be listed. Section 19.6 was added by section 29 of Bill 29. Section 19.6 sets out the procedure required in order to authorize changing or revoking an advance directive.

Section 19.6 reads:

Changing or revoking an advance directive

19.6 (1) An adult who has made an advance directive may change or revoke the advance directive unless the adult is incapable of understanding the nature and consequences of the change or revocation.

(2) A change must be in writing and must be signed and witnessed in the same manner as an advance directive under section 19.5.

(3) An adult may revoke an advance directive by

- (a) making another document, including a subsequent advance directive, and expressing in it an intention to revoke the advance directive, or
- (b) destroying the advance directive with the intention of revoking it.³

3. Consent to health care and refusal of consent to health care

Regarding section 3, the Special Committee could not arrive at a consensus to recommend or not having a list in section 3. The main arguments for not having a list are that a list would make the form too long to be effective and a list would draw attention

³ See www.leg.bc.ca/38th3rd/3rd_read/gov29-3.htm.

to issues larger than for which the Advanced Directive is designed. One solution is to include a list of the specific health care options that are most common.

Section 9 Representation Agreement

The Special Committee reviewed the Section 9 Representation Agreement form.

In practice, the Special Committee observes that most persons appoint their spouse then their children as alternative representatives, so the form should reflect this most common usage.

2. Revocation of Previous Agreements

Regarding the “Note” in section 2, the Special Committee recommends adding “only”, so that the sentence reads:

(Note: Revocation is effective only when written notice of the revocation has been given to each representative, each alternative representative, and any monitor named in the representation agreement that is to be revoked.)

3. Appointment of Representative(s)

Regarding section 3, the Special Committee recommends that the part after “Or” (which adds other representatives) be deleted.

4. Only complete the following if you have named two or more Representatives

Regarding section 4, the Special Committee recommends that section 4 be renumbered section 5 as follows:

5. [Only complete the following if you have named two or more Representatives in section 3.]

5. Alternate Representative

Regarding section 5, the Special Committee recommends that section 5 be renumbered section 4 as follows:

4. Alternate Representative

If my Representative resigns by a document signed by the Representative, dies or is mentally incapable of acting as defined below*, then I name:

Name of Alternate

of _____

Address of Alternate

AND [Optional: you may appoint more than one person to act as your primary or alternate representative.]

, or the survivor, to be my Alternate Representative(s) and my alternate representative will have all the authority granted to my Representative in this Representation Agreement.

The Special Committee is of the consensus that if alternate representatives are listed on the form, there has to be more definitiveness re: for what if the alternate dies, resigns (by a document signed by the alternate) or is mentally incapable of action?

To address the problem of mental incapacity, the Special Committee recommends that a test for capacity must be on the form and this test for mental incapacity be from *Wills Precedents - An Annotated Guide* (CLEBC revised 2008) (authors Peter W. Bogardus, Q.C. and Mary B. Hamilton of Davis LLP) (at 30-19 and 30-20) as follows:

*A Representative is mentally incapable of acting when this mental incapability is confirmed, in writing, by two medical professionals who have each examined the Representative personally. One of these medical professionals must be the Representative's family physician or one of the Representative's treating physicians, and the second medical professional must be either: (a) a physician licensed to practice medicine in the jurisdiction in which that physician practises medicine or (b) a registered psychologist licensed to practice in the jurisdiction in which that psychologist practises.

The Special Committee further recommends that if the Attorney General is not prepared to have this test for mental incapacity on the form, then the Attorney General should not have alternate representatives on the form.

6. Authority

Regarding section 6, the Special Committee recommends that section 6 be amended as follows:

6. Authority

Pursuant to section 9 of the *Representation Agreement Act*, I authorize my Representative to make decisions concerning my personal care and my health care, including giving or refusing to consent to health care while I am incapable of making decisions.

8. Instructions and Wishes

Regarding section 8, the Special Committee recommends:

- that “instructions” be deleted; and
- replace “must make decisions” with “should consider”.

9. Signatures of Adult and Witnesses

Regarding section 9, the Special Committee recommends adding a Note that the adult must sign in the presence of a lawyer or a notary or in the presence of two witnesses.

The Special Committee recommends that, after the witness signature page section 30 of the *Representation Agreement Act*, R.S.B.C. 1996, c. 405 regarding objecting to agreements, changes or revocations be reproduced on the form.

10. Signature of Representative(s)

Regarding section 10, the Special Committee recommends Notice to Witnesses be deleted.

Combined Advance Directive and Section 9 Representation Agreement

The Special Committee reviewed the Combined Advance Directive and Section 9 Representation Agreement form.

The Special Committee arrived at a consensus that there is no need for the Combined Advance Directive and Section 9 Representation Agreement form. In a representation agreement parties can set out their conditions, so there is no need for an advanced directive. A combined form would be too tortuous and too confusing for the average person. As a result, the Special Committee recommends that the Combined Advance Directive and Section 9 Representation Agreement be deleted.

Section 7 Representation Agreement

The Special Committee reviewed the Section 7 Representation Agreement form.

The Special Committee recommends that, on page 1, after "Notes", this form should refer to what the representative can do as part of routine management.

3. Appointment of Representative(s)

4. My Representatives must act

5. Alternate Representative

The Special Committee recommends that the following sections be deleted:

- 3. Appointment of Representative(s);
- 4. My Representatives must act [two or more representatives]; and
- 5. Alternate Representative.

In place of sections 3 to 5, the Special Committee recommends that the same changes recommended by the Special Committee for the section 9 representation agreement form be adopted for this form regarding appointment of representatives, two or more representatives and alternate representatives.

6. Authority

Regarding section 6, the Special Committee recommends that “routine management of my financial affairs” be incorporated in some way, perhaps on page 1 of the form.

7. Monitor

Regarding section 7, the Special Committee submits that the average person will not know what a monitor is. As a result, the Special Committee recommends that monitor be explained on the form: what a monitor does and that the monitor is not the representative.

9. Instructions and Wishes

Regarding section 9, the Special Committee recommends that it be amended as per the Special Committee's recommendations for the section 9 representation agreement form regarding instructions and wishes.

10. Signatures of Adult and Witnesses

Regarding section 10, the Special Committee recommends that it be amended as per the Special Committee's recommendations for the section 9 representation agreement form regarding signatures or adult and witnesses.

11. Signature of Representative(s)

Regarding section 11, the Special Committee recommends that it be amended as per the Special Committee's recommendations for the section 9 representation agreement form regarding signature of representative.

Enduring Power of Attorney

The Special Committee reviewed the Enduring Power of Attorney form.

2. Revocation of Previous Enduring Powers of Attorney

In section 2, the sentence given is: "I revoke all previous Enduring Powers of Attorney made by me". The Special Committee submits that it is common for parties to have more than one power of attorney for different activities, not just an enduring power of attorney. Common examples include: a party's stock market account, then that party's bank account. It is common for a party to want to have an existing power of attorney still be in effect, like with those at financial institutions.

In light of the foregoing, the Special Committee recommends that the words "I revoke all previous Enduring Powers of Attorney made by me" be deleted and replaced by: "I revoke all previous Powers of Attorney made by me except for:" with space on the form for the party to list the Powers of Attorney.

The Special Committee recommends that, in the Note, be added: "You may be revoking any power of attorney to financial institutions".

The Special Committee recommends that the following provision be added:

(Optional: List all previous powers of attorney that the adult does not wish to revoke, include the date of the previous power of attorney and the attorney(s) named in that power of attorney.

3. Appointment of Attorney(s)

4. [Complete the following if you have named two or more Attorneys.]

5. Alternate Attorney

Regarding sections 3, 4 and 5, the Special Committee recommends that the same changes that it recommended for the section 9 representation agreement form (appointment of representative(s), naming two or more representatives and alternate representative) be applied to this form regarding appointment of attorney(s), two or more attorneys and alternate attorney.

Regarding section 4, the Special Committee recommends that the attorneys must act unanimously and may act severally.

9. Directions to Attorney

Regarding section 9, the Special Committee recommends that references to “directions” be deleted and replaced with “wishes”.

10. Compensation

Regarding section 10, section 38 of Bill 29 amends the *Power of Attorney Act*, R.S.B.C. 1996, c. 370 to add a new section 24. Section 24 permits an attorney to be compensated if the enduring power of attorney expressly authorizes the compensation and sets the amount or rate. Section 24 also permits an attorney to be reimbursed from an adult's property for reasonable expenses properly incurred in acting as the adult's attorney.

Section 24 reads:

Payment and expenses of attorney

24 (1) An attorney must not be compensated for acting as an adult's attorney unless the enduring power of attorney expressly authorizes the compensation and sets the amount or rate.

(2) An attorney may be reimbursed from an adult's property for reasonable expenses properly incurred in acting as the adult's attorney.

The Special Committee recommends that a Note be added as follows:

Note: The *Adult Guardianship And Planning Statutes Amendment Act, 2007*, S.B.C. 2007, c. 34 (Bill 29) in section 38, adding a new section 24 to the *Power of Attorney Act*, permits an attorney to be compensated if the enduring power of attorney expressly authorizes the compensation and sets the amount or rate and section 24 also permits an attorney to be reimbursed from an adult's property for reasonable expenses properly incurred in acting as the adult's attorney.

The Special Committee recommends that either section 10 be deleted or section 10 be amended to list 2 boxes: “not compensated” or “compensated as follows:”, with space on the form for the party to list the terms of compensation.

12. Signatures of Adults and Witnesses

Regarding witnesses to the form, the Special Committee has regard to the position of the CBABC Elder Law and Wills and Trusts Victoria Sections.

In the Spring of 2008, in the course of presentations on Bill 29 to the Elder Law and Wills and Trusts Victoria Section, the issue was raised with respect to section 3 of Bill 33. Bill 33 is the *Miscellaneous Statutes Amendment Act, 2008*, S.B.C. 2008, c. 30. Section 3 of Bill 33 amends section 16(6) of the new *Power of Attorney Act* to provide an exemption for trust companies and the Public Guardian and Trustee to the general prohibition against an employee or agent acting as a witness to an enduring power of attorney.

In May 2008, as a result of these discussions, Hugh McLellan of Vancouver emailed the Deputy Attorney General that:

“members of the Law Society of B.C.” should also be included in the category of exempted persons under section 3 of Bill 33. Concern has been expressed by lawyers that they personally will find themselves in situations where they wish to make an enduring power of attorney and have another lawyer in their firm act as attorney and another lawyer in the firm act as a witness – which is currently permitted, but may not be permitted under the new *Power of Attorney Act* if the witnessing lawyer is an employee or agent of the attorney. Prudent practice would dictate that an enduring power of attorney be made even if the document was for a purely commercial or temporary use. Frankly, I have never heard of any examples of fraud arising from this practice, but even if there was, the Special Compensation Fund of the Law Society would presumably cover it, so there would be no risk to the public by making this small amendment. I hope this receives favourable consideration.

The Deputy Attorney General replied to Hugh McLellan’s recommendation that there was merit to the suggestion and that the idea will be considered and recommendations will be made to the Minister on whether to adopt this approach in the future.

The Special Committee recommends that section 3 of Bill 33 be amended to add “members of the Law Society of B.C.” to the category of exempted persons under section 3 of Bill 33 and that the form reflect this exemption.

Regarding signature pages, it is common for parties to have a situation where the donor and attorney sign the form at different times and in different places. As a consequence, the Special Committee recommends that, on the signature pages on the form, that the form permit the common situation where the donor and attorney sign the form at different times and in different places. The Special Committee recommends that the form should be changed to permit the donor to sign in the presence of a lawyer and not require the attorney to sign in presence of the donor. If the attorney cannot sign in the presence of the donor, the form should have extra boxes in order to comply with Part 5 of the *Land Title Act*, R.S.B.C. 1996, c. 250.

RECOMMENDATIONS

The Special Committee recommends that:

Adult Guardianship Informational Material

1. the Adult Guardianship Informational Material be amended to:
 - replace references to “judge” with “Supreme Court”;
 - add references regarding the right to be represented by a lawyer;
 - clarify that the reference to being “incapable” is “mentally incapable”; and
 - clarify that the Lawyer Referral Service is the Lawyer Referral Service of the British Columbia Branch of the Canadian Bar Association;

Incapacity Planning Forms

2. that each incapacity planning form as listed in the Appendix to this submission have under the title to each form this notation: “The use of this form is voluntary.”;

Advance Directive

3. section 2, which revokes all previous Advance Directives, list section 19.6 of the *Health Care (Consent) and Care Facility (Admission) Act*;

Section 9 Representation Agreement

- 4. section 2, "Note" be amended as follows:

(Note: Revocation is effective only when written notice of the revocation has been given to each representative, each alternative representative, and any monitor named in the representation agreement that is to be revoked.);

- 5. section 3, be deleted in that part after "Or" (which adds other representatives);

- 6. section 4 be renumbered section 5 and be amended:

5. [Only complete the following if you have named two or more Representatives in section 3.]

- 7. section 5 be renumbered section 4 and be amended:

4. Alternate Representative

If my Representative resigns by a document signed by the Representative, dies or is mentally incapable of acting as defined below*, then I name:

Name of Alternate

of _____

Address of Alternate

AND [Optional: you may appoint more than one person to act as your primary or alternate representative.]

, or the survivor, to be my Alternate Representative(s) and my alternate representative will have all the authority granted to my Representative in this Representation Agreement.

8. the renumbered section 4 list this test for mental capacity on the form:

A Representative is mentally incapable of acting when this mental incapability is confirmed, in writing, by two medical professionals who have each examined the Representative personally. One of these medical professionals must be the Representative's family physician or one of the Representative's treating physicians, and the second medical professional must be either: (a) a physician licensed to practice medicine in the jurisdiction in which that physician practises medicine or (b) a registered psychologist licensed to practice in the jurisdiction in which that psychologist practises.

9. if the Attorney General is not prepared to have this test for mental incapacity on the form, then the Attorney General should not have alternate representatives on the form;

10. section 6 be amended:

6. Authority

Pursuant to section 9 of the *Representation Agreement Act*, I authorize my Representative to make decisions concerning my personal care and my health care, including giving or refusing to consent to health care while I am incapable of making decisions.

11. section 8, "instructions" be deleted and replace "must make decisions" with "should consider";

12. section 9 add a Note that the adult must sign in the presence of a lawyer or a notary or in the presence of two witnesses;

13. after the witness signature page, section 30 of the *Representation Agreement Act*, regarding objecting to agreements, changes or revocations be reproduced on the form;
14. section 10 delete the Notice to Witnesses;

Combined Advance Directive and Section 9 Representation Agreement

15. the Combined Advance Directive and Section 9 Representation Agreement form be deleted;

Section 7 Representation Agreement

16. page 1, after “Notes”, refer to what the representative can do as part of routine management;
17. sections 3, 4 and 5 be deleted;
18. in place of sections 3 to 5, the same changes recommended by the Special Committee for the section 9 representation agreement form be adopted for this form regarding appointment of representatives, two or more representatives and alternate representatives;
19. section 6 add “routine management of my financial affairs”;

20. section 7 describe what a monitor does and that the monitor is not the representative;
21. section 9 be amended as per the Special Committee's recommendations for the section 9 representation agreement form regarding instructions and wishes;
22. section 10 be amended as per the Special Committee's recommendations for the section 9 representation agreement form regarding signatures or adult and witnesses;
23. section 11 be amended as per the Special Committee's recommendations for the section 9 representation agreement form regarding signature of representative;

Enduring Power of Attorney

24. section 2 be amended, "I revoke all previous Powers of Attorney made by me except for:" with space on the form for the party to list the Powers of Attorney;
25. section 2, in the Note, be amended: "You may be revoking any power of attorney to financial institutions.";

26. section after the Note, add:

(Optional: List all previous powers of attorney that the adult does not wish to revoke, include the date of the previous power of attorney and the attorney(s) named in that power of attorney.
27. sections 3, 4 and 5 be deleted;
28. in place of sections 3,4 and 5, the same changes recommended by the Special Committee for the section 9 representation agreement form (appointment of representative(s), naming two or more representatives and alternate representative) be applied to this form regarding appointment of attorney(s), two or more attorneys and alternate attorney;
29. section 4 be amended to provide that the attorneys must act unanimously and may act severally;
30. section 9 delete references to “directions” and be replaced with “wishes”;
31. section 10 add a Note:

Note: The *Adult Guardianship And Planning Statutes Amendment Act, 2007*, S.B.C. 2007, c. 34 (Bill 29) in section 38, adding a new section 24 to the *Power of Attorney Act*, permits an attorney to be compensated if the enduring power of attorney expressly authorizes the compensation and sets the amount or rate and section 24 also permits an attorney to be reimbursed from an adult's property for reasonable expenses properly incurred in acting as the adult's attorney.

32. section 10 be deleted or section 10 be amended to list 2 boxes: “not compensated” or “compensated as follows:”, with space on the form for the party to list the terms of compensation;
33. regarding witnesses to the form, that section 3 of Bill 33 be amended to add “members of the Law Society of B.C.” to the category of exempted persons under section 3 of Bill 33 and that the form reflect this exemption;
34. regarding the signature page on the form, that the form permit the common situation where the donor and attorney sign the form at different times and in different places and the form should be changed to permit the donor to sign in the presence of a lawyer and not require the attorney to sign in presence of the donor. If the attorney cannot sign in the presence of the donor, the form should have extra boxes in order to comply with Part 5 of the *Land Title Act*.

CONCLUSION

The Special Committee and the Wills and Trusts Vancouver Section would welcome further discussion and dialogue with the Attorney General respecting these submissions.

Any communications can be directed to:

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APPENDIX

The Adult Guardianship Informational Material is attached.

The following incapacity planning forms are attached:

- Advance Directive;
- Section 9 Representation Agreement;
- Section 7 Representation Agreement; and
- Enduring Power of Attorney.

IMPORTANT INFORMATION ABOUT ADULT GUARDIANSHIP

TO:
(Name of adult for whom a guardianship order is being sought)

Why are you getting this information?

An application is being made to the Supreme Court of British Columbia for the appointment of a person to make decisions for you about your

.....
(Personal care, health care and/or financial affairs – fill in all that apply)

This person is known as a guardian.

Who is applying for a guardian to be appointed?

The application is being made by
(Name of applicant)

The person proposed as your guardian is
(Name of proposed guardian/s)

How is a guardian appointed?

The Supreme Court will hold a hearing to decide whether a guardian should be appointed for you.

You have a right to be at that hearing and you have the right to be represented by a lawyer.

If you wish to be at the hearing or represented by a lawyer or if you wish to receive notice of the hearing and receive copies of the documentation that is filed, you should complete and file with the Supreme Court within 7 days of receiving this document an Appearance in the form attached.

How will Supreme Court decide?

The Supreme Court will appoint a guardian if the Supreme Court is satisfied that all of these conditions exist:

- that decisions have to be made about your personal care, health care, and/or your financial affairs;

- that you are mentally incapable of making those decisions – in other words, you cannot make those decisions or carry them out by yourself;
- that you need and will benefit from the help and protection of a guardian; and
- that your needs cannot be met in other ways.

Do you have a say?

If you believe that any of these conditions do not apply to you, or you want a different person appointed as your guardian, you can disagree with the application.

For example, you could show that you do not need a guardian or that there are other ways of meeting your needs. Or, you can show that a different person would be a better guardian.

If you disagree with the application, you may wish to seek the assistance of a lawyer.

Can the Supreme Court's order be changed later?

If the Supreme Court appoints a guardian for you and you later believe that the guardian is not needed or that you should have a different guardian, you can ask the Supreme Court to review the appointment. On review, the Supreme Court may cancel or change the guardianship order.

Any person can ask for a review for you.

How can a lawyer be contacted?

If you choose to consult a lawyer and need help finding one, you can call the Lawyer Referral Service of the British Columbia Branch of the Canadian Bar Association at 604.687.3221 or toll free in BC at 1.800.663.1919.

ADVANCE DIRECTIVE

Pursuant to the *Health Care (Consent) and Care Facility (Admission) Act*

The use of this form is voluntary.

1. This is the Advance Directive of:

_____ *Full Legal Name of Adult*

of _____ *Address of Adult*

_____ *Date of Birth*

_____ *(Optional) Personal Health Number [BC Care Card]*

2. I revoke all previous Advance Directives made by me.

[Note: Section 19.6 of the *Health Care (Consent) and Care Facility (Admission) Act* sets out the legal procedure required in order to authorize changing or revoking an advance directive:

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19.6 (1) An adult who has made an advance directive may change or revoke the advance directive unless the adult is incapable of understanding the nature and consequences of the change or revocation.

(2) A change must be in writing and must be signed and witnessed in the same manner as an advance directive under section 19.5.

(3) An adult may revoke an advance directive by

(a) making another document, including a subsequent advance directive, and expressing in it an intention to revoke the advance directive, or

(b) destroying the advance directive with the intention of revoking it.]

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3. Consent to health care and refusal of consent to health care

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If I need health care and I am incapable of giving or refusing consent to health care, I give the following instructions:

[**Note:** If a health care decision is required for which a health care provider must obtain consent, and the health care decision is not specifically addressed in this advance directive, the decision may be made by a substitute decision maker.]

I consent to the following health care:

I refuse consent to the following health care:

[Note: You may not use this document to appoint someone to consent or refuse to consent to health care on your behalf. If you wish to appoint someone to consent or refuse consent to health care on your behalf you must use a Representation Agreement.]

4. I understand that as a result of making this Advance Directive:

- a. I will not be provided with the health care for which I refuse consent in this Advance Directive, and
- b. No one will be chosen to make decisions on my behalf in respect of the health care matters for which I consent or refuse consent in this Advance Directive.

5. Signatures of Adult and Witnesses

Adult's Signature

Date

The following persons may not be a witness:

- a. A person who provides personal care, health care or financial services to the adult for compensation, other than a lawyer or notary public;
- b. A spouse, child, parent, employee or agent of a person described in paragraph (a);
- c. A person who is under 19 years of age;
- d. A person who does not understand the type of communication used by the adult, unless the person receives interpretive assistance to understand that type of communication.

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Note: Only one witness is required if the witness is a lawyer or notary public.

Witness No. 1

(Witness No. 1 must sign in the presence of the Adult and Witness No. 2):

Signature

Name

Witness No. 2

(Witness No. 2 must sign in the presence of the Adult and Witness No. 1):

Signature

Name

Address	Address
Date	Date

Notice to Witnesses

If you have reason to believe that the adult is incapable of making, changing or revoking an Advance Directive, or that fraud, undue pressure or some other form of abuse or neglect was used to induce an adult to make the Advance Directive, or to change or revoke a previous Advance Directive, you should not witness the Advance Directive.

SECTION 9 REPRESENTATION AGREEMENT

Pursuant to Section 9 of the *Representation Agreement Act*

The use of this form is voluntary.

1. This Representation Agreement is made by

_____ Full Legal Name of Adult
of _____ Address of Adult

2. Revocation of Previous Agreements

I revoke all previous Representation Agreements made by me.

(**Note:** Revocation is effective only when written notice of the revocation has been given to each representative, each alternative representative, and any monitor named in the representation agreement that is to be revoked.)

3. Appointment of Representative(s)

I name the following person to be my Representative:

_____ Full Legal Name of Representative
of _____ Address of Representative

4. Alternate Representative

If my Representative resigns by a document signed by the Representative, dies or is mentally incapable of acting as defined below* then I name:

_____ Name of Alternate
of _____ Address of Alternate

AND [Optional: you may appoint more than one person to act as your primary or alternate representative.]

, or the survivor, to be my Alternate Representative(s) and my alternate representative will have all the authority granted to my Representative in this Representation Agreement.

*A Representative is mentally incapable of acting when this mental incapability is confirmed, in writing, by two medical professionals who have each examined the Representative personally. One of these medical professionals must be the Representative's family physician or one of the Representative's treating physicians, and the second medical professional must be either: (a) a physician licensed to practice medicine in the jurisdiction in which that physician practises medicine or (b) a registered psychologist licensed to practice in the jurisdiction in which that psychologist practises.

5. [Only complete the following if you have named two or more Representatives in section 3.]

My Representatives must act:

(Check one)

- Unanimously [Representatives must act together]
- Severally [Representatives can act separately]

6. Authority

Pursuant to section 9 of the *Representation Agreement Act*, I authorize my Representative to make decisions concerning my personal care and my health care, including giving or refusing to consent to health care while I am incapable of making decisions.

(Optional)

7. Conditions and Restrictions

The authority given to the Representative is subject to the following conditions or restrictions:

(Optional)

8. Wishes

In making decisions for me, my Representative should consider the following wishes:

9. Signatures of Adult and Witnesses

Adult's Signature

Date

Note: The Adult must sign in the presence of a lawyer or a notary or in the presence of two witnesses.

The following persons may not be a witness:

- a. A person named in the representation agreement as a representative or alternate representative;
- b. A spouse, child or parent of a person named in the representation agreement as a representative or alternate representative;
- c. An employee or agent of a person named in the representation agreement as a representative or alternate representative;
- d. A person who is under 19 years of age.
- e. A person who does not understand the type of communication used by the adult unless the person receives interpretive assistance to understand that type of communication.

Note: Only one witness is required if the witness is a lawyer or notary public.

Witness No. 1	Witness No. 2
(Witness No. 1 must sign in the presence of the Adult and Witness No. 2):	(Witness No. 2 must sign in the presence of the Adult and Witness No. 1):
_____ Signature	_____ Signature
_____ Name	_____ Name
_____ Address	_____ Address
_____ Date	_____ Date

Section 30 of the *Representation Agreement Act* provides:

Objecting to agreements, changes or revocations

30 (1) Any person may make an objection to the Public Guardian and Trustee if there is a reason to believe that

- (a) an adult is, or was at the time, incapable of making, changing or revoking a representation agreement,
- (b) 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 a representation agreement,
- (c) the making, use or revocation of a representation agreement or a change to a representation agreement is clearly inconsistent with the current wishes, values, beliefs or best interests of the adult who made, revoked or changed the agreement,
- (d) there is an error in a representation agreement or an error was made in executing, witnessing or registering the agreement,

(e) anything improper has occurred in the making, use or revocation of a representation agreement,

(f) *[Not in force — see Supplement]*

(g) a representative is not qualified under section 5 (1),

(h) a representative is

(i) abusing or neglecting the adult for whom the representative is acting,

(ii) failing to follow the instructions in the representation agreement,

(iii) incapable of acting as representative, or

(iv) otherwise failing to comply with the representation agreement or the duties of a representative,

(i) a representative has given or proposes to give consent to health care that is not authorized by the representation agreement, or

(j) any criteria specified in the representation agreement as grounds for objection have been met.

(2) *[Not in force — see Supplement]*

(3) On receiving notice of an objection, the Public Guardian and Trustee must promptly review the objection and may do one or more of the following:

(a) conduct an investigation to determine the validity of the objection and then advise the objector of the outcome;

(b) to (d) *[Not in force — see Supplement]*

(e) apply to the court for an order confirming a change to, or the revocation of, a representation agreement, or for an order cancelling all or part of a representation agreement;

(e.1) apply to the court for an order that a representation agreement is not invalid solely because of a defect in the execution of the agreement;

(f) recommend that someone else apply to the court for an order referred to in paragraph (d), (e) or (e.1);

(g) make a report under section 46 of the *Adult Guardianship Act*;

(g.1) appoint a monitor;

(g.2) authorize that a monitor appointed under paragraph (g.1) be remunerated, out of the adult's assets, for acting as a monitor in relation to authority given to a representative under section 7 (1) (a), (b) or (d) or 9 (1) (g) and set the amount or rate of the remuneration;

(h) take any other action that the Public Guardian and Trustee considers necessary.

10. Signature of Representative(s)

Representative No. 1

Representative's Signature

Date

Representative No. 2 [if more than one representative is named]

Representative's Signature

Date

SECTION 7 REPRESENTATION AGREEMENT

Pursuant to Section 7 of the *Representation Agreement Act*

The use of this form is voluntary.

Note: A representative appointed under a section 7 representation agreement cannot be authorized to:

- help make, or to make on the adult's behalf, a decision to refuse health care necessary • to preserve life;
- help make, or to make on the adult's behalf, a decision about the kinds of health care • prescribed under section 34 (2) (f) of the *Health Care (Consent) and Care Facility (Admission) Act*;
- to physically restrain, move or manage the adult, or authorize another person to do these • things, over the objections of the adult;
- admit the adult under the *Health Care (Consent) and Care Facility (Admission) Act* to a care facility, unless the facility is a family care home, a group home for the mentally handicapped, or a mental health boarding home.

[The CBABC Special Committee recommends that this form should refer to what the representative can do as part of routine management.]

If you wish to give a representative this type of authority, please refer to the section 9 representation agreement.

1. This Representation Agreement is made by

_____ Full Legal Name of Adult
of _____ Address of Adult

2. Revocation of Previous Agreements

I revoke all previous Representation Agreements made by me.

(**Note:** Revocation is effective when written notice of the revocation has been given to each representative, each alternative representative, and any monitor named in the representation agreement that is to be revoked.)

[The CBABC Special Committee recommends that the same changes for the form for section 9 representation agreements be adopted for this form section 7 representation agreements re: appointment of representatives, two or more representatives and alternate representatives.]

6. Authority

[The CBABC Special Committee recommends that “routine management of my financial affairs” be incorporated in some way, perhaps on page 1 of the form.]

Pursuant to section 7 of the *Representation Agreement Act*, I authorize my Representative to help me make decisions, or to make decisions on my behalf, concerning:

(Check one or more)

- personal care;
- routine management of my financial affairs;
- major health care and minor health care, as defined in the *Health Care (Consent) and Care Facility (Admission) Act*;
- obtaining legal services for me and instructing counsel to commence proceedings, except divorce proceedings, or to continue, compromise, defend or settle any legal proceedings on my behalf.

Note: Section 7 (2.1) of the *Representation Agreement Act* states that a representative appointed under section 7 of the *Representation Agreement Act* cannot be authorized to:

- help make, or to make on the adult’s behalf, a decision to refuse health care necessary to preserve life;
- help make, or to make on the adult’s behalf, a decision about the kinds of health care prescribed under section 34(2)(f) of the *Health Care (Consent) and Care Facility (Admission) Act*;
- to physically restrain, move or manage the adult, or authorize another person to do these things, over the objections of the adult;
- admit the adult under the *Health Care (Consent) and Care Facility (Admission) Act* to a care facility, unless the facility is a family care home, a group home for the mentally handicapped, or a mental health boarding home.

[The CBABC Special Committee recommends that what a monitor does and that the monitor is not the representative should be explained in this form.]

7. Monitor

Note: This provision appointing a monitor is not required if:

- a. the representation agreement does not authorize a representative to make, or help to make, decisions concerning routine management of financial affairs;
- b. the named representative is the adult’s spouse, the Public Guardian and Trustee, a trust b. company or a credit union;
- c. the authority to make decisions regarding the routine management of financial affairs has been given to two or more representatives and they are required to act unanimously.

I name the following person as Monitor of this Representation Agreement:

_____ Name of Monitor

of _____ Address of Monitor

(Optional)

8. Conditions and Restrictions

The authority given to my Representative is subject to the following conditions or restrictions:

[The CBABC Special Committee recommends that section 9 Instructions and Wishes be amended as per changes for section 9 representation agreement.]
(Optional)

9. Instructions and Wishes

My Representative must make decisions based on the following instructions or wishes:

[The CBABC Special Committee recommends that section 10, signatures of adult and witnesses, be amended as per changes for section 9 representation agreement.]

10. Signatures of Adult and Witnesses

Adult's Signature

Date

The following persons may not be a witness:

- a. A person named in the representation agreement as a representative or alternate representative;
- b. A spouse, child or parent of a person named in the representation agreement as a representative or alternate representative;
- c. An employee or agent of a person named in the representation agreement as a representative or alternate representative;
- d. A person who is under 19 years of age.
- e. A person who does not understand the type of communication used by the adult unless the person receives interpretive assistance to understand that type of communication.

Note: Only one witness is required if the witness is a lawyer or notary public.

Witness No. 1

(Witness No. 1 must sign in the presence of the Adult and Witness No. 2):

Signature

Name

Witness No. 2

(Witness No. 2 must sign in the presence of the Adult and Witness No. 1):

Signature

Name

Address		Address
Date		Date

[The CBABC Special Committee recommends that section 11, signature of representatives, be amended as per changes for section 9 representation agreement.]

11. Signature of Representative(s)

Representative No. 1

Representative's Signature

Date

Representative No. 2 [if more than one representative is named]

Representative's Signature

Date

The following certificates must be completed:

- Form 1 (Certificate of Representative or Alternate Representative);
- Form 3 (Certificate of Monitor), if the representation agreement names a monitor;
- Form 4 (Certificate of Person Signing for the Adult), if a person is signing the representation agreement on behalf of the adult;
- Form 5 (Certificate of Witnesses).

ENDURING POWER OF ATTORNEY

Pursuant to Part 2 of the *Power of Attorney Act*

The use of this form is voluntary.

1. This Enduring Power of Attorney is given by:

_____ *Full Legal Name of Adult*
of _____
_____ *Address of Adult*

2. Revocation of Previous Enduring Powers of Attorney.

I revoke all previous Powers of Attorney made by me except for:

[**Note:** Revocation is only effective upon written notice being given to all Attorneys named in the power of Attorney that is to be revoked, or on a later date stated in the notice. You may be revoking any power of attorney to financial institutions.]

(Optional: List all previous powers of attorney that the adult does not wish to revoke, include the date of the previous power of attorney and the attorney(s) named in that power of attorney.

[The CBABC Special Committee recommends that the same changes for the form for section 9 representation agreements be adopted for this form re: appointment of representatives, two or more attorneys and alternate attorneys.]

3. Appointment of Attorney(s)
(Choose one)

I name the following person to be my Attorney in accordance with Part 2 of the *Power of Attorney Act*:

_____ *Full Legal Name of Attorney*
of _____
_____ *Address of Attorney*

OR

- I name the following persons to be my Attorneys in accordance with Part 2 of the *Power of Attorney Act*:

_____ *Full Legal Name of Attorney*

of _____
Address of Attorney

and

_____ *Full Legal Name of Attorney*

of _____
Address of Attorney

[You may appoint two or more persons.]

4. [Complete the following if you have named two or more Attorneys.]
(Choose one)

My Attorneys:

- Must act unanimously [Attorneys must act together]
 May act severally [Attorneys can act separately]

(Optional)

5. Alternate Attorney

If my Attorney [, or any one of them,] [include if more than one Attorney is named] is unwilling to act, dies or is for any other reason unable to act, then I appoint:

_____ *Full Legal Name of Alternate*

of _____
Address of Alternate

to be my Alternate Attorney and if so acting has all the authority granted to my Attorney in this Enduring Power of Attorney.

6. Authority

I authorize my Attorney to do anything on my behalf that I may lawfully do by an agent in relation to my financial affairs.

7. Continued Authority

My Attorney may exercise authority while I am capable of making decisions about my financial affairs and this authority continues despite my incapability to make decisions about my financial affairs.

(Optional)

8. Conditions and Restrictions

The authority given to my Attorney is subject to the following conditions or restrictions:

[The CBABC Special Committee recommends that section 9 Directions to Attorney be amended as per changes for section 9 representation agreement]

(Optional)

9. Wishes to Attorney

The following wishes are given to my Attorney:

Note: The *Adult Guardianship And Planning Statutes Amendment Act, 2007, S.B.C. 2007, c. 34 (Bill 29)* in section 38, adding a new section 24 to the *Power of Attorney Act*, permits an attorney to be compensated if the enduring power of attorney expressly authorizes the compensation and sets the amount or rate and section 24 also permits an attorney to be reimbursed from an adult's property for reasonable expenses properly incurred in acting as the adult's attorney.

10. Compensation

- My Attorney is not to be compensated for acting as my Attorney.
- My Attorney is to be compensated for acting as my Attorney as follows:

11. This Enduring Power of Attorney is effective on the date by which it has been signed both by me (the Adult) and by the Attorney.

12. Signatures of Adults and Witnesses

Adult's Signature _____ Date _____

The following persons may not be a witness:

- A person named as an attorney;
- A spouse, child or parent or a person named as an attorney;
- Except in the case of the Public Guardian and Trustee, a financial institution or a member of the Law Society of BC, an employee or agent, of a person named as an attorney;
- A person who is under 19 years of age; and
- A person who does not understand the type of communication used by the adult unless • the person receives interpretive assistance to understand that type of communication.

Note: Only one witness is required if the witness is a lawyer or notary public.

Witness No. 1	Witness No. 2
(Witness No. 1 must sign in the presence of the Adult and Witness No. 2):	(Witness No. 2 must sign in the presence of the Adult and Witness No. 1):
_____ Signature	_____ Signature
_____ Name	_____ Name
_____ Address	_____ Address
_____ Date	_____ Date

Attorney No. 1

Attorney's
Signature

Date

Witness No. 1

(Witness No. 1 must sign in the presence of the Adult and Witness No. 2):

Signature

Name

Address

Date

Witness No. 2

(Witness No. 2 must sign in the presence of the Adult and Witness No. 1):

Signature

Name

Address

Date

Attorney No. 2

[if more than one attorney is named]

Attorney's
Signature

Date

Witness No. 1

(Witness No. 1 must sign in the presence of the Adult and Witness No. 2):

Signature

Name

Address

Date

Witness No. 2

(Witness No. 2 must sign in the presence of the Adult and Witness No. 1):

Signature

Name

Address

Date

Signature	Signature
Name	Name
Address	Address
Date	Date

Alternate Attorney

Attorney's
Signature

Date

Witness No. 1

(Witness No. 1 must sign in the presence of the Adult and Witness No. 2):

Signature

Name

Address

Witness No. 2

(Witness No. 2 must sign in the presence of the Adult and Witness No. 1):

Signature

Name

Address

Date	Date
------	------

[The CBABC Special Committee recommends that this form permit the common situation where donor and attorney’s sign form at different times and in different places. The form should be changed to permit the donor to sign in the presence of a lawyer and not require the attorney to sign in presence of the donor. If the attorney cannot sign in the presence of the donor, the form should have extra boxes in order to comply with Part 5 of the *Land Title Act*.]

Notice to Witnesses

If you have reason to believe that the adult is incapable of making, changing or revoking an Enduring Power of Attorney, or that fraud, undue pressure or some other form of abuse or neglect was used to induce an adult to make the Enduring Power of Attorney, or to change or revoke a previous Enduring Power of Attorney, you should not witness the Enduring Power of Attorney.

Note: In order for this Enduring Power of Attorney to be effective for the purposes of the *Land Title Act*, it must be executed and witnessed in accordance with the *Land Title Act*. If the Attorney will be required to deal with an interest in land or other real property, this section must be completed by a lawyer, notary public or other person before whom an affidavit may be sworn under the *Evidence Act*.

EXECUTION DATE								
OFFICER SIGNATURE	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; text-align: center;">Y</td> <td style="width: 33%; text-align: center;">M</td> <td style="width: 33%; text-align: center;">D</td> </tr> <tr> <td style="height: 40px;"></td> <td></td> <td></td> </tr> </table>	Y	M	D				DONOR’S SIGNATURE
Y	M	D						
		ATTORNEY’S SIGNATURE						
		ALTERNATE ATTORNEY’S SIGNATURE						

Officer Certification:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

