

Planning for the Future

Estate Planning
Financial Powers of Attorney &
Advance Health Care Planning

Law

International organization dedicated to addressing the legal issues of older adults in Canada

Law Reform

Public Legal Education and Information

Community Outreach

Contact Info

- Laura Watts, LLB
National Director
Canadian Centre for Elder Law Studies
1822 East Mall, UBC, Faculty of Law
Annex 1
Vancouver, BC
V6T 1Z1
604-822-0142
lwatts@bcli.org
www.ccel.s.ca

DECISIONS

NEXUS OF
CAPABILITY

OFTEN A "GREY"
ZONE - CHANGING
CAPABILITY

CAPABLE	INCAPABLE
YOU DECIDE	SOME ONE ELSE DECIDES (SDM)

Tools in BC

Wills

Joint Accounts or Property Transfers

Trusts

Other tools

Powers of Attorney

Representation Agreements

1. WILLS

Wills

Only valid after death – no “pre-death” or incapability”

Post-state disposition = what happens to your stuff”

Does not have to be drafted by a lawyer

Can be registered – only a notice of where it

Can be simple or complex

Wills

Needs to be signed for two witnesses, in the presence of each other

Initial each page

Review annually for best practice

Costs can vary – shop around

WILLS

need to be probated - probate fees modest (1.4% of estate)

filing fees (approx. \$208)

can be challenged or varied after death (Wills Variation Act) if disposition is deemed "unfair"

if you are going to cut someone out of your will you should draft a supplementary letter with reasons as good practice

Wills Notice Registration

Wills Notice of Registration or Change \$17

Wills Search \$20

Request for Search of Alias Names \$

BC Online Handling Fee for Wills \$1.50

Vital Statistics –

www.vs.gov.bc.ca/admin.fees.html

property transfers

property transfers

• accounts or property ownership joint, there is no “estate” to probate

• Often recommended by financial institutions and financial planners

• Growing area of concern

• Can be very dangerous – open to abuse

• cases – resulting trusts – depends on facts

3. Trusts

3. Trusts

A trust is a legal tool which “protects” assets

Can also be used for tax advantages or to “hold onto” certain assets

The “trustee” holds the assets for the sole benefit of another

Highest level of responsibility for trustee

Trustee can charge a fee for overseeing the trust

4. Other Tools

4. Other Tools

Inter Vivos (while alive) gifts

Loans and Guarantees among family members and friends

Income stream or loan tools (home equity loans, reverse mortgages etc)

Caregiving agreements or contracts

Incorporation and asset transfers

5. Powers of Attorney

OF ATTORNEY?

A LEGAL DOCUMENT WHICH YOU SIGN
WHICH GIVES SOMEONE THE AUTHORITY
TO “STAND IN YOUR SHOES”
FINANCIALLY

SEVERAL DIFFERENT TYPES -
“REGULAR”, “ENDURING”, “SPRINGING”,
“LIMITED” - EACH HAS THEIR OWN USE

POWERS OF ATTORNEY

A LEGAL DOCUMENT (WRITTEN)

SIGNED BY THE "DONOR"

APPOINTS ONE OR MORE ATTORNEYS

STANDS IN YOUR LEGAL SHOES

SEVERAL KINDS (REGULAR, ENDURING,
SPRINGING, LIMITED)

FINANCIAL (POA)

FINANCIAL
DECISIONS
ONLY

IF NO
ENDURING /
SPRINGING
POA, THEN
GOES TO
PGT

CAPABLE	INCAPABLE
YOU DECIDE	GUARDIAN ATTORNEY PGT- WILL TO LOCATE SOMEONE ELSE PGT - ONGOING

DIFFERENT TYPES

REGULAR” POA RARELY USED - ENDS UPON INCAPABILITY

ENDURING” POA COMMON - ACTIVE NOW AND CONTINUES INTO INCAPABILITY

SPRINGING” POA SOMEWHAT COMMON - NOT ACTIVE UNTIL INCAPABILITY

LIMITED” RARELY USED - FOR SPECIFIC PURPOSES ONLY AND LIMITED IN TIME

FINANCIAL ABUSE

SIGNIFICANT AREA OF EXPLOITATION

TORONTO POLICE IDENTIFIED THIS AS #1
ISSUE OF CONCERN FOR NEXT 10 YEARS

BE VERY CAREFUL ABOUT WHO YOU
APPOINT - THEY CAN BANKRUPT YOU

planning

Planning?

describes care and treatment that a person wants in the future when he or she is no longer mentally capable for decision making about treatment

may focus on end of life care or also include wishes about care and treatment over course of life

may provide information on patients values and beliefs to guide SDM's decision-making

CARE DECISIONS (BC)

RANKING LIST

ALWAYS HAVE SOMEONE TO MAKE A
SUBSTITUTE HEALTH CARE DECISION
FOR YOU

HEALTH CARE SDM

COURT APPOINTED GUARDIAN (PERSONAL AND FINANCIAL REPRESENTATIVE" AS CHOSEN IN REPRESENTATION AGREEMENT DOCUMENT)

HEALTH CARE CONSENT ACT DEFAULT ORDER OF AUTHORITY LIST IF NEITHER GUARDIAN OR REPRESENTATIVE

PREVIOUS DEFAULT LIST IN BC HEALTH CARE

**Representative - Appointed in a Rep
Agreement**

Spouse

Child

Parent

Brother or sister

**Anyone else related by birth or adoption
to the adult**

**Public Guardian and Trustee as last
resort**

Representative - Appointed in a written Representation Agreement

Spouse

Child

Parent

Brother or sister

Grandparent

Grandchild

Anyone else related by birth or adoption to the adult

Close friend

A person immediately related to the adult by marriage

Public Guardian and Trustee as last resort

health care sdm (bc)

HEALTH
DECISIONS
ONLY

CAPABLE	INCAPABLE
YOU DECIDE	GUARDIAN REPRESENTATIVE SPOUSE CHILD SIBLING GRANDPARENT GRANDCHILD ANY OTHER RELATION CLOSE FRIEND IN LAWS DCT

ADVANCE DIRECTIVES

IN THE REVISED LEGISLATION, NEW
ADVANCE DIRECTIVES” ARE CREATED

SIMILAR IN CONCEPT TO A “LIVING WILL

FOUND IN PART 2.1 OF BILL 29

http://www.leg.bc.ca/38th3rd/3rd_read/gov29/advance_directives.htm

ADVANCE DIRECTIVES

WRITTEN, SIGNED BY 2 WITNESSES BOTH IN THE PRESENCE OF THE ADULT

EXCEPTIONS FOR SIGNING

WITNESS IF A LAWYER OR NOTARY

RESTRICTIONS ON WHO CAN WITNESS

NOT PERSON PROVIDING CARE OR SERVICES FOR COMPENSATION, CHILD, PARENT, EMPLOYEE OR AGENT OF THE ADULT, PERSON WHO IS NOT AN ADULT, PERSON WHO DOES NOT UNDERSTAND ADULT FORM OF COMMUNICATION UNLESS TRANSLATION - S.19.5)

ADVANCE DIRECTIVE DOES NOT APPLY

(1) This section applies if a health care provider reasonably believes

the instructions in an adult's advance directive do not address the health care decision

in relation to a health care decision, the instructions in an adult's advance directive are so unclear that it cannot be determined whether the adult gave or refused consent to the health care,

since the advance directive was made and while the adult was capable of expressing the adult's wishes, values or beliefs in relation to a health care decision, the adult's wishes, values or beliefs significantly changed, and the change is not reflected in the advance directive, or

since the advance directive was made, there have been significant changes in medical knowledge, practice or technology that might

ADVANCE DIRECTIVES

WILL HEALTH CARE PROVIDER FEEL
COMFORTABLE NOT TALKING TO AN SD

WILL THE ADVANCE DIRECTIVE BE “OUT
OF DATE”?

WHO WILL DECIDE, WHEN?

LARGE ONUS ON PHYSICIAN

OVERALL

IF NONE OF THESE ISSUES ARE ASSISTED
BY HAVING A WILL

NEED TO PLAN IN ADVANCE (WRITTEN
DOCUMENTS OR CLEAR DISCUSSION)

CHOOSE YOUR BEST SUBSTITUTE
DECISION-MAKER, BASED ON
APPROPRIATENESS, NOT EMOTION

ISSUES

NEW LAWS ARE NOT YET IN FORCE

UNCERTAIN WHEN IN FORCE - LIKELY AT
LEAST 2008/2009.

MAY BE SOME CONFUSION IN THIS
TRANSITION TIME

WHEN TO DISCUSS?

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Of course, we could discuss the government and...

- **CANADIAN CENTRE FOR ELDER LAW**
www.ccels.ca (especially our “links” and “resources” pages)
- **PUBLIC GUARDIAN AND TRUSTEE**
www.trustee.bc.ca
- **BC CENTRE FOR ELDER ADVOCACY AND SUPPORT**
www.bcceas.ca
- **VANCOUVER COASTAL HEALTH REACT**
www.vchreact.ca
- **NIDUS PERSONAL PLANNING**
www.rarc.ca
- **ADVOCACY CENTRE FOR THE ELDERLY**
www.advocacycentreelderly.org (ONT)