

Part 3 — General Matters Respecting Enduring Powers of Attorney

Division 1 — Information

Access to information

32 (1) An attorney may request information and records respecting the adult for whom the attorney is acting, if the information or records relate to

- (a) the incapability of the adult, or
- (b) an area of authority granted to the attorney.

(2) An attorney has the same right to information and records described under subsection (1) as does the adult for whom the attorney is acting.

(3) A qualified health care provider or other person who is responsible for assessing the adult's incapability has the right to all the information necessary to enable the qualified health care provider or other person to perform his or her duties under this Act or an enduring power of attorney.

(4) Any person who has custody or control of information that a qualified health care provider or other person is entitled to under subsection (3) must disclose that information to the qualified health care provider or other person.

(5) Subsection (4) overrides

- (a) any claim of confidentiality or privilege, except a claim based on solicitor-client privilege, and
- (b) any restriction in an enactment or the common law about the disclosure or confidentiality of information, except a restriction in section 51 of the *Evidence Act*.

Disclosing information

33 An attorney must not disclose information or records obtained in the exercise of his or her authority except to the extent necessary to

- (a) perform his or her duties,
- (b) make a report to the Public Guardian and Trustee under section 34 (2) or comply with a requirement of the Public Guardian and Trustee, or
- (c) make an application to, or comply with an order of, the court.

Division 2 — Reports and Remedies

Reporting to Public Guardian and Trustee

34 (1) In this section, "abuse" and "neglect" have the same meaning as in the *Adult Guardianship Act*.

(2) Any person may make a report to the Public Guardian and Trustee if the person has reason to believe that

- (a) an adult is, or was at the time, incapable of making, changing or revoking an enduring power of attorney,
- (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 an enduring power of attorney, or
- (c) an attorney is
 - (i) abusing or neglecting the person for whom the attorney is acting,
 - (ii) incapable of acting as an attorney, or
 - (iii) otherwise failing to comply with an enduring power of attorney or with the duties of an attorney.

(3) If a person makes a report, the Public Guardian and Trustee must promptly review the report and may do one or more of the following:

- (a) conduct an investigation to determine the validity of the report, and, if an investigation is conducted, the Public Guardian and Trustee may advise the person who made the report of the outcome;
- (b) apply to the court for an order described in section 36;
- (c) advise the person who made the report that the person may apply to the court for an order described in section 36;
- (d) make a report under section 46 of the *Adult Guardianship Act*;
- (e) take steps under the *Patients Property Act* to become a committee or take steps under the *Adult Guardianship Act* to become a statutory property guardian;
- (f) take no action, or take any action that the Public Guardian and Trustee considers necessary.

(4) Unless the person acts falsely and maliciously, no action for damages may be brought against a person for

- (a) making a report to the Public Guardian and Trustee under this section, or
- (b) assisting in an investigation conducted by the Public Guardian and Trustee under this Act.

Investigations by Public Guardian and Trustee

35 (1) If the Public Guardian and Trustee has reason to believe that any of the circumstances set out in section 34 (2) exist, the Public Guardian and Trustee may

conduct an investigation, regardless of whether a report has been made under that section.

(2) After conducting an investigation, the Public Guardian and Trustee may do anything set out in section 34 (3) (b) to (f) .

Court directions and orders

36 (1) On application by an attorney, the court may

- (a) give directions respecting the scope of an attorney's powers and duties, and
- (b) make an order directing a person to release information to the attorney for the purpose of allowing the attorney to exercise the attorney's authority under this Act.

(2) On application by a person, the court may make an order that another person release information to the applicant if the court considers that the information is necessary to determine the incapability of an adult who is making, or who has made, an enduring power of attorney.

(3) On application by the Public Guardian and Trustee or an attorney, the court may make an order that an enduring power of attorney is valid despite a defect in the signing of the enduring power of attorney.

(4) On application by the Public Guardian and Trustee, the court may make any order that the court considers necessary to assist the Public Guardian and Trustee in carrying out the Public Guardian and Trustee's duties and powers under this Act, including an order directing a person to release information to the Public Guardian and Trustee for the purposes of an investigation.

(5) On application by the Public Guardian and Trustee or a person who made a report to the Public Guardian and Trustee under section 34, the court may make any order that the court considers necessary, including an order

- (a) to confirm a change to, or the revocation of, an enduring power of attorney,
- (b) to terminate all or part of an enduring power of attorney, or
- (c) that, if the application concerns a matter described in section 34 (2) (a) or (b),
 - (i) the enduring power of attorney and all actions done under it are void, or
 - (ii) the enduring power of attorney is terminated, but any action done under it before it was terminated is not void.

(6) When making an order under subsection (5), the court must consider the wishes, instructions, beliefs and values of the adult who made the enduring power of attorney, and must not make a contrary order unless

- (a) the adult is incapable, and
- (b) the order is in the best interests of the adult.

(7) The costs of an application to the court are at the discretion of the court, and the court may order that all or part of those costs be paid from the property of the adult who made the enduring power of attorney.

Court jurisdiction

37 Nothing in this Act

- (a) limits the inherent jurisdiction of the court to act in a *parens patriae* capacity, or
- (b) deprives a person of the right to ask the court to exercise that jurisdiction.

Division 3 — General

Extrajurisdictional powers of attorney

38 Subject to any limitation or condition set out in the regulations, a power of attorney that

- (a) applies or continues to apply when an adult is incapable,
- (b) was made in a jurisdiction outside British Columbia, and
- (c) complies with any prescribed requirements

is deemed to be an enduring power of attorney made under this Act.

***Offence Act* does not apply**

39 Section 5 of the *Offence Act* does not apply to Part 2 or 3, or the regulations.

Conflict with representation agreement

40 If any provision, respecting an adult's financial affairs, of a representation agreement made by an adult under the *Representation Agreement Act* is inconsistent with, or in conflict with, a provision of an enduring power of attorney made by the adult, the inconsistency or conflict is to be resolved in favour of the provision in the enduring power of attorney.

Power to make regulations

41 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

- (a) prescribing matters for the purposes of section 12 (2) (g) ;
- (b) respecting records to be kept by an attorney, including the form and content of those records;

- (c) respecting the value of gifts or loans, or charitable gifts, that may be made by an attorney under section 20 (1) (c), expressed in any form, including as a percentage of net income, and including setting different values for different classes of gifts, loans and charitable gifts;
- (d) prescribing offences for the purposes of section 29 (2) (d) (v) ;
- (e) defining words and expressions used but not defined in this Act;
- (f) prescribing Acts for the purpose of the definition of "health care provider" in section 10;
- (g) prescribing classes of health care providers whose members may act as qualified health care providers.

(3) The minister may publish forms that may be used in the making of an enduring power of attorney, but it is not necessary for an adult to use a published form for an enduring power of attorney to be valid.

(4) The Lieutenant Governor in Council may make regulations respecting extrajurisdictional powers of attorney for the purposes of section 38, including

(a) limiting the application of section 38 according to

(i) the jurisdiction in which the extrajurisdictional power of attorney was made, or

(ii) the manner in which the extrajurisdictional power of attorney was made or signed,

(b) respecting conditions or limitations on the operation of the extrajurisdictional power of attorney,

(c) respecting the exercise of powers or performance of duties by a person authorized to act in respect of the extrajurisdictional power of attorney,

(d) respecting the application of any provision of this Act or the regulations to a person acting in respect of the extrajurisdictional power of attorney, and

(e) prescribing circumstances in which section 38 does not apply, or ceases to apply.

Transitional — enduring powers of attorney made before Parts 2 and 3 enacted

42 (1) An enduring power of attorney that was validly made under section 8, before the repeal, on September 1, 2011, of that section by the *Adult Guardianship and Planning Statutes Amendment Act, 2007*, is deemed to be an enduring power of attorney made under Part 2.

(2) If an enduring power of attorney that was validly made under section 8, before the repeal, on September 1, 2011, of that section by the *Adult Guardianship and Planning Statutes Amendment Act*,

2007, contains an authorization that is permitted under that section but would not otherwise be permitted under Part 2, the authorization continues to be valid.

(3) The Lieutenant Governor in Council may make regulations the Lieutenant Governor in Council considers necessary or advisable to

(a) bring Parts 2 and 3 into operation, and

(b) facilitate the application of Parts 2 and 3 to an enduring power of attorney that was validly made under section 8, before the repeal of that section by the *Adult Guardianship and Planning Statutes Amendment Act, 2007*.

(4) For the purposes of subsection (3), an enduring power of attorney includes any document that is ancillary to the enduring power of attorney.

(5) The authority to make or amend a regulation under subsection (3), but not the authority to repeal a regulation under subsection (3), ends 3 years after the date on which subsection (3) comes into force.