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Background

BCLI Report no. 36—Report on the Recognition of Adult Guardianship Orders from Outside the Province

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This report explores procedures surrounding issues that arise when adult guardianship orders are made outside the province. Adult guardianship orders appoint persons to make decisions and manage the physical well-being, property, and financial affairs in circumstances where individuals are unable to act for themselves. The increasing mobility and wealth of older persons means that issues concerning such orders will arise with more prevalence than in the past.

This report reviews the concept of adult guardianship generally and outlines the legal framework and its evolution from its origin in English legislation. At the time this report was published, the law in British Columbia governing adult guardianship was found primarily in the *Patients Property Act*. This Act is outlined, including the procedure for appointing committees, their powers and duties, and the role of enduring powers of attorney and representation agreements. The procedure for dealing with foreign adult guardianship orders is explored, and the report finds that the law provides a limited response to the issues arising out of extra provincial orders. Notably, there are no specific provisions dealing with the recognition of foreign adult guardianship orders.

The report sets out recommendations to improve the legal framework for approaching adult guardianship orders emanating from other Canadian provinces and territories. The general thrust of the recommendations is that the *Enforcement of Canadian Judgments and Decrees Act* (ECJDA) provides a more comprehensive approach to the issue, and should be the sole mechanism for the recognition of adult guardianship orders emanating from outside the province. This position was implicitly endorsed by the BCLI in its 1999 *Report on the Enforcement of Non-Money Judgments from Outside the Province*. The ECJDA was based on the most comprehensive of the Uniform Acts promulgated at the 1997 annual meeting of the Uniform Law Conference of Canada and was passed by the legislature in 2003. The report considers a number of scenarios to illustrate how some of the procedures under the ECJDA would function in various circumstances.

With regard to non-Canadian guardianship orders, the report recommends amending the *Patients Property Act* and adoption of a procedure analogous to the one that exists for the

“resealing” of foreign probate orders. Draft legislation for such amendments is included in the report.