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## Backgrounder

### **BCLI Report no. 18—Private Care Agreements Between Older Adults and Friends or Family Members**

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A private care agreement involves an older adult's transfer of property, usually residential property, to a friend or family member in exchange for a promise of care and support in the home. The arrangement is usually made orally and without legal advice, and the law regarding enforcement of such agreements is unclear. Unsuccessful care agreements sometimes result in serious consequences, which may undermine vital family relationships. Older adults may not receive the care promised in the agreement, they may lose their homes if the living relationship breaks down, or they might find themselves living in unhappy or even abusive caregiving relationships. Caregivers also are vulnerable where an older adult's deteriorating health places increased demands on the caregiver beyond what was originally expected.

This report discusses some of the problems associated with private care agreements. The report addresses the relationship between these agreements and issues such as financial abuse, the failure of the agreements to anticipate future changes, and accompanying family conflict.

The law relating to private care agreements and associated issues is discussed and the report determines that the common law is neither clear nor consistent in its treatment of private care agreements. When a private care agreement is considered a valid contract, common law rules of interpretation and enforcement apply. The report reviews the law of contracts with attention to considerations for determining whether an oral agreement can exist as a legal contract. Where agreements are not found to be legally binding contracts they might instead be characterized as gifts, and subsequently the report discusses those rules as well. The report also addresses additional relevant issues including filial responsibility legislation in British Columbia set out in the *Family Relations Act*, the legal doctrines of undue influence (a defense to enforcing a contract involving one person in a position of power taking advantage of another person), unconscionability (a defence to enforcement of a contract where the terms appear to unfairly favour one party), resulting trusts (a situation where the object of the transfer reverts back to the transferor), and unjust enrichment (in contract, a situation in which a benefit is obtained unfairly at the expense of another).

The report outlines “Guidelines for Good Practice” to help professionals in circumstances where it seems a private care agreement is intended. These guidelines include a non-inclusive list of “what ifs,” and things to consider when thinking of entering a private care agreement. In addition, the report recommends that professionals retain notes and documents pertaining to the agreements, and encourages professionals to advise the parties involved to obtain independent legal advice. The report also includes draft legislation that would serve to provide fair, workable, and consistent outcomes for private care agreements.