

# Report on the Recognition of Adult Guardianship Orders from Outside the Province



## British Columbia Law Institute

1822 East Mall, University of British Columbia, Vancouver, B.C., Canada V6T 1Z1

Voice: (604) 822-0142 Fax:(604) 822-0144 E-mail: bcli@bcli.org  
WWW: <http://www.bcli.org>

---

The British Columbia Law Institute was created in 1997 by incorporation under the Provincial *Society Act*. Its mission is to:

- (a) promote the clarification and simplification of the law and its adaptation to modern social needs,
- (b) promote improvement of the administration of justice and respect for the rule of law, and
- (c) promote and carry out scholarly legal research.

The Institute is the effective successor to the Law Reform Commission of British Columbia which ceased operations in 1997.

---

The members of the Institute Board are:

Thomas G. Anderson	Prof. Keith Farquhar
Gordon Turriff, Q.C.	Arthur L. Close, Q.C. (Executive Director)
Craig Goebel (Vice-chair)	Ann McLean (Chair)
Prof. James MacIntyre, Q.C. (Treasurer)	Gregory Steele, Q.C. (Secretary)
D. Peter Ramsay, Q.C.	Trudi Brown, Q.C.
Prof. Martha O'Brien	Kim Thorau
Robert W. Grant	Ronald A. Skolrood

---

*This project is being carried out as part of the Institute's Community Law Reform Project, which is made possible with the financial support of the Law Foundation of British Columbia and of the Ministry of Attorney General. The Institute gratefully acknowledges the support of these bodies for its work.*

---

### Library and Archives Canada Cataloguing in Publication

#### Report on the recognition of adult guardianship orders from outside the Province

(BCLI report; no. 36)  
ISBN 1-894278-28-3

1. Guardian and ward – British Columbia. 2. Jurisdiction – British Columbia I. British Columbia Law Institute II Series.

KEB208.R46 2005 346.71101'8 C2005-9011952-2  
KF553.R46 2005





## INTRODUCTORY NOTE

The British Columbia Law Institute has the honour to present:

### Report on the Recognition of Adult Guardianship Orders from Outside the Province

The increasing mobility of persons and wealth makes it inevitable that from time to time issues will arise concerning adult guardianship orders made outside the province, the extent to which they should be given effect, and the machinery for doing so. The current law provides only a limited response to these issues. Legislation that is not yet in force would provide a more comprehensive answer but there is a need to integrate these developments and identify clearly the procedures available.

This report describes the current and pending procedures and sets out recommendations concerning what the Institute considers to be the most appropriate approach. The general thrust of the recommendations is that the *Enforcement of Canadian Judgments and Decrees Act* should be the principal vehicle for giving effect to adult guardianship orders emanating from other Canadian provinces and territories. This is a position that was implicitly endorsed by the Institute in its 1999 “Report on the Enforcement of Non-Money Judgments from Outside the Province.”

Special provisions would make the *Enforcement of Canadian Judgments and Decrees Act* procedure available to government officials of other provinces who assume guardianship responsibilities by operation of law. So far as non-Canadian orders are concerned, the report recommends a confirmation procedure analogous to the one that exists for the “resealing” of foreign probate orders.

Ann McLean  
Chair, British Columbia Law Institute

March 2005



# The Recognition of Adult Guardianship Orders from Outside the Province

---

## TABLE OF CONTENTS

<b>I.</b>	<b>Adult Guardianship Generally in British Columbia.....</b>	<b>1</b>
	A. The Concept.....	1
	B. The Legal Framework and its Evolution.....	1
	C. Procedure for the Appointment of a Committee in British Columbia.....	3
	D. Powers and Duties of a Committee.....	4
	1. Powers.....	4
	2. Duties.....	5
	E. The Role of Enduring Powers of Attorney and Representation Agreements.....	6
	1. Patient by Court Order.....	6
	2. Patient by Certificate of Incapability.....	6
<b>II.</b>	<b>Extrajurisdictional Adult Guardianship Orders.....</b>	<b>7</b>
	A. The Legal Framework Outside British Columbia.....	7
	B. When Will a Non-British Columbia Order be Relevant?.....	8
	C. Current Legal Response in British Columbia.....	8
	D. Alternative or Supplementary Machinery.....	9
	1. <i>Adult Guardianship Act</i> .....	9
	2. <i>Uniform Enforcement of Canadian Judgments and Decrees Act</i> .....	9
	3. Hague Convention on the International Protection of Adults.....	10
	4. Scenarios.....	11
<b>III.</b>	<b>Rationalizing British Columbia Law in Relation to the Recognition of Extrajurisdictional Adult Guardianship Orders.....</b>	<b>13</b>
	A. Extrajurisdictional Adult Guardianship Orders.....	13
	1. Registration under the <i>Enforcement of Canadian Judgments and Decrees Act</i> .....	13
	2. The Effect of Registration.....	14
	(a) <i>Application of British Columbia Adult guardianship Laws</i> .....	14
	(b) <i>Continuing Application of the Laws of the Place of Origin</i> .....	16
	B. Statutory Committees.....	16
	C. Non-Canadian Orders.....	17
<b>IV.</b>	<b>Recommendations.....</b>	<b>18</b>

## The Recognition of Adult Guardianship Orders from Outside the Province

---

<b>Appendix A</b> - <i>Patients Property Act</i> , R.S.B.C. 1996, c. 349 (selected provisions).....	19
<b>Appendix B</b> - <i>Adult Guardianship Act</i> R.S.B.C. 1996, c. 6, ss. 42 and 43 (not in force).....	22
<b>Appendix C</b> - <i>Enforcement of Canadian Judgments and Decrees Act</i> , S.B.C. 2003, c. 29 ( not in force; selected provisions).....	23
<b>Appendix D</b> - Draft Legislation.....	24

### I. Adult Guardianship Generally in British Columbia

#### A. The Concept

Some persons may be unable to act for themselves owing to a severe developmental disability, severe mental disorder, severe head injury or degenerative disease, or some other condition. In these circumstances, the affected persons may be declared incompetent or incapable and another person may be appointed to make decisions for them and to manage their physical well-being, property and financial affairs. This is generally known as “guardianship.” Adult guardianship serves to protect the well-being of the affected adults and protect them from neglect, exploitation or abuse. The procedure to declare a person incompetent or incapable and to appoint a substitute decision maker can involve medical certification or a judicial hearing. In British Columbia, the person appointed as the substitute decision maker is referred to as a “committee.” This responsibility may also be given to the Public Guardian and Trustee (hereafter “PGT”), a provincial government official who provides public “protective services” on a long-term basis.

#### B. The Legal Framework and its Evolution

For hundreds of years, the courts have, at common law, been responsible for deciding when people need help with decision making. More recently, statutory schemes have provided for the appointment of decision makers. In British Columbia, the origins of the existing legislation affecting judicial determinations of incapacity or incompetency can be traced to the English *Lunacy Act*, 1890.<sup>1</sup> The English *Lunacy Act* was an attempt to consolidate the lunacy laws of 19<sup>th</sup> century England. It was an omnibus statute that dealt with the issues of institutionalization, competency, guardianship of the person and guardianship of an estate.

The 1897 British Columbia *Lunacy Act*<sup>2</sup> adopted key aspects of the English statute in their entirety. The *Lunacy Act* was designed to provide for the “care and commitment of the person and estates of lunatics,” these being defined as including persons incapable of managing their affairs because of “mental infirmity arising from disease or age or otherwise.” On application, a Judge exercising jurisdiction over lunacy matters could order an inquisition to determine whether persons were of unsound mind and incapable of managing themselves

---

1. 53 & 54 Vict., c. 5.

2. R.S.B.C. 1897, c. 126.

## The Recognition of Adult Guardianship Orders from Outside the Province

---

and their affairs and appoint a committee. A committee had full powers over the person and the person's estate subject to the discretion and instructions of the Court.

The *Lunacy Act* saw few changes until the 1950's. In 1911, the Act was amended to allow the Attorney General of the province to become the *ex officio* committee of an individual who had been committed to a hospital for the insane and was without a committee.<sup>3</sup> The *Lunacy Act Amendment Act, 1951*<sup>4</sup> took into account developments in provincial mental health. The amendments required that an individual who was admitted to the provincial "clinic of psychological medicine" would be deemed a "lunatic" only if certified as incapable by the medical officer in charge of the clinic. Prior to this, any patient who was committed to a mental health facility was automatically deemed to be incapable.

The *Lunacy Act* was further amended in 1955 to authorize the office of the "Official Committee" to take over the role of the Attorney General as *ex officio* committee of estates of lunatics who did not have a committee. The duties of the Official Committee have since devolved on the PGT.

The *Lunacy Act* was repealed in 1962 by the *Patients' Estates Act*.<sup>5</sup> This Act preserved the original judicial model and expanded the 1955 provisions to include any patients in a mental health facility. The *Patients' Estate Act* also provided that any persons admitted to a mental health facility were not deemed incompetent to manage their affairs without a medical examination and certification. The current *Patients Property Act* is substantially similar to the *Patients' Estates Act* and differs in name only.

In 1993, a series of four statutes collectively known as the Adult Guardianship Statutes was developed.<sup>6</sup> Due to practical and fiscal difficulties, these statutes were not proclaimed until 2000 and even then there was only a partial proclamation. The 2000 proclamation brought into force most of the *Representation Agreement Act*, Part 3 of the *Adult Guardianship Act*, Part 2 of the *Health Care (Consent) and Care Facility (Admission) Act*, and most of the *Public Guardian and Trustee Act*. A new scheme for guardians set out in the *Adult Guardianship Act (Part 2)* was left out of the proclamation.

---

3. *Lunacy Act*, S.B.C. 1911, c. 25.

4. S.B.C. 1951, c. 51.

5. S.B.C. 1962, c. 44.

6. *Adult Guardianship Act*, R.S.B.C. 1996, c. 6, *Health Care (Consent) and Care Facility (Admission) Act*, R.S.B.C. 1996, c. 181, *Public Guardian and Trustee Act*, R.S.B.C. 1996, c.383 and *Representation Agreement Act*, R.S.B.C. 1996, c. 405.

---

## The Recognition of Adult Guardianship Orders from Outside the Province

---

The unproclaimed Part 2 of the *Adult Guardianship Act* was intended to repeal and replace the *Patients Property Act*. Its features included the elimination of statutory property committeehip by medical certification so that guardianship could only be created through court appointment,<sup>7</sup> three levels of decision makers depending on the nature and degree of the person's need for a substitute, court appointment only where informal solutions do not address the needs of the patient and monitors to oversee the conduct of individual guardians.

The *Adult Guardianship Act (Part 2)* also reflects an attempt to shift away from inaccurate and stereotypical terminology. The legislative history shows the evolving terminology from “curator in lunacy” in the English lunacy law to “committeehip” to “adult guardianship.” In this report we use both “committeehip” and “adult guardianship” (or simply “guardianship”) – the former usually in connection with current and past law and the latter when the concept is referred to in a general way. More difficult is finding a word to designate the person who is the subject matter of the guardianship. Referring to the person as being a “patient” has undesirable connotations but the continued reference to the person in the legislation as “the adult” is no improvement being both stilted and distracting. In this report we adhere to the “patient” terminology.

### C. Procedure for the Appointment of a Committee in British Columbia

The *Patients Property Act* is flexible in providing for the appointment of a committee of the individual's estate, a committee of the individual's person or both as the nature and extent of the disability. A committee of the estate is responsible for making substitute decisions in the areas of an individual's financial and legal affairs while a committee of person is responsible for making decisions in the areas of an individual's health and personal care.

Under the *Patients Property Act* adult<sup>8</sup> persons may become “patients” in one of two ways. The first is through a Supreme Court order declaring such persons incapable of managing their own affairs and/ or themselves.<sup>9</sup> In this case, the person who applied for the order, or

---

7. The PGT of British Columbia considered the question of whether statutory guardianships should be retained in its discussion paper dated February 2004 and entitled, “Court and Statutory Guardianship: *The Patients Property Act* and *The Adult Guardianship Act (Part 2)*: A Discussion Paper on Modernizing the Legal Framework.” The PGT made the recommendation that retention, rather than abolition, of statutory guardianship is a necessary compromise due to the high costs associated with going to court particularly in relation to individuals of modest financial means. In addition, statutory guardianships better protect the privacy of an individual than the public court process.

8. *Macdonald v. British Columbia (Public Guardian and Trustee)* 2003 BCCA 428 clarified that the *Patients Property Act* is only intended to relate to adults. In this case, the British Columbia Court of Appeal allowed an appeal by the PGT and overturned a trial decision issuing a committeehip in respect of a child.

9. *Patients Property Act*, s.1(b).

## The Recognition of Adult Guardianship Orders from Outside the Province

---

the PGT becomes the committee of the “patient’s” estate, or person, or both, depending on the nature and extent of the disability.<sup>10</sup>

The second way persons may become “patients” is if a director of a provincial mental health facility or psychiatric unit<sup>11</sup> signs a Certificate of Incapability stating that such a person, because of mental infirmity arising from disease, age or otherwise, is incapable of managing the person’s own affairs. A Certificate of Incapability removes patients’ rights to make decisions regarding their own legal and financial affairs and automatically appoints the PGT as their committee.<sup>12</sup> This procedure is often referred to as “statutory committeehip,” a term used to distinguish this form of guardianship from the court-appointed committeehip. Only the PGT can be appointed through this process and this is how the PGT receives the majority of its committee of estate appointments.<sup>13</sup>

### D. Powers and Duties of a Committee

#### 1. Powers

The *Patients Property Act* says little about the role, powers and duties of committees of the person. The only substantive reference in relation to personal care matters is found in the declaration that the committee of person has “the custody of the person of the patient.”<sup>14</sup> The committee of person likely has extremely wide powers and is subject to a general duty to act in the best interests of the patient.<sup>15</sup> For example, a committee can determine where the patient is to live, can admit the patient to a mental health or other health care or residential facility and can probably consent to medical treatment and other forms of health care that are

---

10. *Ibid.*, s. 6(1), 6(3).

11. As defined in the *Mental Health Act*, R.S.B.C. 1996, c. 288.

12. *Patients Property Act*, s. 1(a), 6(3).

13. “Practice Guidelines for Certificate of Incapability Assessment under the Patients Property Act” issued by the PGT (Jan. 9, 2003) stipulates that a Certificate of Incapability should only be issued as a last resort.

14. *Patients Property Act*, s. 15(1)(b)(ii).

15. This can be deduced from the case law affecting the selection of a committee. The individual selected as committee of person of a patient is the person most likely to act in the patient’s best interests, it follows then that the committee should behave accordingly, once appointed. *See, Re Pollen* (1996), 15 E.T.R. (2d) 154 (B.C.S.C.) [In Chambers] and *Finlay v. Finlay* (1997), 16 E.T.R. (2d) 216 (B.C.S.C.).

## The Recognition of Adult Guardianship Orders from Outside the Province

---

in the best interests of the patient and to refuse consent under the same circumstances. However, this latter power does not exist if the patient has the capability to give or refuse consent.<sup>16</sup>

With respect to the committee of estate, the only substantive reference to the committee's powers is the broad proposition that the committee holds "all the rights, privileges and powers with regard to the estate of the patient as the patient would have if of full age and of sound and disposing mind."<sup>17</sup> The committee is an agent for the patient and has a fiduciary duty to administer the estate for the patient's benefit.<sup>18</sup> The scope of a committee's power includes the initiation and conduct of litigation.<sup>19</sup> A committee does not, however, have authority to make, alter or revoke a will.<sup>20</sup>

The statute is also largely silent on how decisions are to be made except that a committee is required to act "for the benefit of the patient and the patient's family, having regard to the nature and value of the property of the patient and the circumstances and needs of the patient and the patient's family."<sup>21</sup> The court has a discretion to limit the rights, powers and privileges of a committee.<sup>22</sup>

### 2. Duties

At a general level, committees are under an obligation to exercise their power and authority for the benefit of the affected patient and to use reasonable care in managing the patient's estate. The *Patients Property Act* also provides for the posting of security in the form of a bond and passing the accounts at specified intervals.<sup>23</sup> The Act also stipulates that the

---

16. See, R.M. Gordon and S.N. Verdun-Jones, *Adult Guardianship Law in Canada*, (Toronto: Carswell, 1992) at pp. 4-6 to 4-7; *Health Care (Consent) and Care Facility (Admission) Act*, R.S.B.C. 1996, c. 181, ss. 3 and 4.

17. *Patients Property Act*, s. 15(1)(b)(i).

18. *British Columbia (Public Trustee) v. Bradley Estate* (1999), 25 E.T.R. (2d) 67 (B.C.S.C.) [In Chambers], *rev'd* 2000 BCCA 78 (B.C.C.A.).

19. *Beadle (Guardian ad litem of) v. Beadle* (1984), 56 B.C.L.R. 386 (C.A.).

20. *Allen (Committee of) v. Bennett* (1994), 96 B.C.L.R. (2d) 280 (S.C.).

21. *Patients Property Act*, s. 18.

22. *Ibid.*, s. 16(1).

23. *Ibid.*, s. 10(1).

## The Recognition of Adult Guardianship Orders from Outside the Province

---

committee must ensure that the costs involved in the maintenance, care and treatment of the patient are met.<sup>24</sup>

### E. The Role of Enduring Powers of Attorney and Representation Agreements

The *Patients Property Act* ensures that someone can be appointed to assist a patient who becomes incapable of making decisions concerning personal and/or financial affairs. However, many people wish, while they are capable, to choose who should have the authority to make, or to assist in the making of these decisions should they become incapable of making those decisions themselves. Two instruments that may be used for that purpose are representation agreements and enduring powers of attorney. Both allow an individual to name their substitute decision maker in advance. A representation agreement, which may deal with both personal and financial affairs, may be made under the *Representation Agreement Act*<sup>25</sup>. The person on whom the authority is conferred is the “representative.” Pursuant to the *Power of Attorney Act*,<sup>26</sup> an individual may use an enduring power of attorney to grant authority to the “attorney” to deal with that individual’s financial affairs.

Sections 19.1 and 19.2 of the *Patients Property Act* which came into force February 28, 2000 were added to clarify the relationship among powers of attorney, representation agreements, Certificates of Incapability and committeeship orders.

#### 1. Patient by Court Order

If an individual becomes a patient by court order, then every power of attorney given by the person is terminated. Representation agreements are also terminated by default unless the court orders otherwise. The court could, for example, appoint a committee of estate but decide that it is in the best interests of the patient to allow a representative with authority to make personal care and health care decisions to continue to exercise that authority.<sup>27</sup>

#### 2. Patient by Certificate of Incapability

If an individual becomes a patient by a Certificate of Incapability, the effect this will have on powers of attorney and representation agreements depends on both the nature of the

---

24. *Ibid.*, s. 23(1).

25. R.S.B.C. 1996, c. 405.

26. R.S.B.C. 1996, c. 370.

27. *Patients Property Act*, s. 19(a) and (b).

## The Recognition of Adult Guardianship Orders from Outside the Province

---

agreement and the discretion of the PGT.<sup>28</sup> Once the Certificate of Incapability is issued, every power of attorney granted by the patient is suspended. The PGT may make a determination that it is not necessary or desirable for the PGT to manage the patient's property in which case the suspension is lifted and the attorney may continue to act under the power of attorney. If the PGT does not make that determination then the power of attorney is terminated. Analogous procedures apply with respect to representation agreements.

## II. Extraprovincial Adult Guardianship Orders

### A. The Legal Framework Outside British Columbia

The laws in almost every province and territory provide for applications from interested parties who feel that a person is in need of guardianship of the person and/or estate.<sup>29</sup> The criteria to be satisfied before an adult guardian is appointed and the procedure to be followed are usually set out in specific provincial or territorial "incompetency" legislation similar to the *Patients Property Act*.<sup>30</sup> The title of the person responsible for making substitute decisions varies across the jurisdictions and includes "committee," "trustee" and "guardian." There is also legislation in the majority of provinces and the territories that provides for statutory guardianship of the estate of a person suffering from a mental disorder and admitted to a mental health facility similar to the Certificate of Incapability procedure found in British Columbia.<sup>31</sup> Usually, a public trustee service equivalent to British Columbia's PGT assumes control over the adult's estate.

---

28. *Ibid.*, s. 19.1 and 19.2

29. The exception is Quebec legislation which does not provide a framework for statutory guardianship and instead emphasizes that the Public Curator is not to act as the curator or tutor for a person of full age unless appointed by a court.

30. These statutes are: *Dependent Adults Act*, R.S.A. 2000, c. D-11; *The Adult Guardianship and Co-decision-making Act*, S.S. 2000, c. A-5.3; *The Mental Health Act*, C.C.S.M. c. M110; *Substitute Decisions Act, 1992*, S.O. 1992, c. 30; *Civil Code of Quebec*, S.Q. 1991, c. 64, *Code of Civil Procedure*, R.S.Q., c. C-25 and *Public Curator Act*, R.S.Q. c. C-81; *Infirm Persons Act*, R.S.N.B. 1973, c. I-8; *Adult Protection Act*, R.S.N.S. 1989, c. 2; *Mental Health Act*, R.S.P.E.I. 1988, c. M-6.1; *Mentally Disabled Persons' Estate Act*, R.S.N.L. 1990, c. M-10; *Mental Health Act*, R.S.Y. 2002, c. 150; *Mental Health Act*, R.S.N.W.T. 1988, c. M-10.

31. In Manitoba, the procedure extends to guardianship of the person, as well as the estate; the public trustee service assumes both responsibilities when a certificate of incapacity is issued.

---

### B. When Will a Non-British Columbia Order be Relevant?

The increasing mobility of persons and wealth makes it inevitable that from time to time issues will arise concerning adult guardianship orders made outside the province, the extent to which they should be given effect, and the machinery for doing so. A person may live in British Columbia but hold property in other jurisdictions. Similarly, residents of other jurisdictions may hold property in British Columbia. An adult guardianship order made outside of British Columbia will be relevant where the patient has property or rights with a British Columbia *situs* that must be dealt with. The status of the order is also relevant when the patient and guardian are both physically present in British Columbia. This may simply be for a short visit or a reflection of an intention to permanently relocate to this province.

### C. Current Legal Response in British Columbia

Under the current *Patients Property Act* there are no provisions specifically dealing with the recognition of foreign adult guardianship orders. In order for a person who is not resident in British Columbia to be brought under the *Patients Property Act*, the Lieutenant Governor in Council may appoint the person whose duty it is to manage, handle, administer or care for the patient's property and estate in the other province as the patient's committee of estate in British Columbia.<sup>32</sup> This is a highly cumbersome way of recognizing an extraprovincial committee that imposes an unnecessary burden on both the Cabinet and the applicant.

The Order-in-Council procedure addresses only one of the two basic circumstances in which recognition of an extraprovincial order may arise. This is where the patient has property within British Columbia but the patient and presumably the committee are located in a different province. The procedure is not available to validate the continuation of an adult guardianship where the patient and the committee have relocated to British Columbia. In this case, a fresh application under the *Patients Property Act* would be required.

Moreover, the Order-in-Council procedure is only available if the patient is located in Canada. If the patient is located outside Canada, in Washington state or Great Britain for example, the procedure would not be available and presumably a fresh application under the *Patients Property Act* would again be required.

---

32. *Patients Property Act*, s. 31(1), see Appendix A. If the procedure is not followed, the court will not recognize a guardian whose authority arises under the law of a different jurisdiction, as the guardian *ad litem* for a non-resident patient. See, *British Columbia (Public Trustee) v. William's Estate* (1990), 45 B.C.L.R. (2d) 242.

---

### D. Alternative or Supplementary Machinery

#### 1. *Adult Guardianship Act*

The *Adult Guardianship Act (Part 2)* which is not in force would if proclaimed carry forward the Order-in-Council procedure currently contained in section 31 of the *Patients Property Act*. Additionally, it provides in section 42 that a person seeking recognition and enforcement of a foreign order may apply to the court of the province to “reseat” the foreign order.<sup>33</sup> The effect of resealing the order is that the foreign order is treated as if it were an order made under the domestic guardianship legislation. The limitations of resealing are that the order is subject to any condition that the resealing court may impose in the order; and the order is subject to the provisions of the domestic legislation respecting guardians.<sup>34</sup> The recognition of foreign orders through resealing is limited to those that originate from prescribed jurisdictions.

Section 42 clearly represents an improvement over the current procedure. First, the resealing procedure is available where the patient has relocated to British Columbia as well as where the patient has property in British Columbia. Second, an application to “reseat” an order is made to the court rather than the Cabinet which would make the procedure much more accessible and probably less expensive. Finally, orders that are amenable to resealing may come from either a Canadian court or a court of a “prescribed jurisdiction outside Canada.” The basis on which non-Canadian jurisdictions would be approved for prescription is not clear from the legislation.

The *Adult Guardianship Act* was enacted in 1993 and twelve years later Part 2 of the Act containing ss. 42 and 43 still has not been brought into force. In the meantime, however, yet another mechanism has emerged in relation to extraprovincial adult guardianship orders.

#### 2. *Uniform Enforcement of Canadian Judgments and Decrees Act*

In 1997 the Uniform Law Conference of Canada promulgated the last of a trio of uniform acts designed to fill the gap in Canadian law with respect to the interprovincial enforcement

---

33. The text of ss. 42 and 43 of the *Adult Guardianship Act*, R.S.B.C. 1996, c. 6 may be found in Appendix B. The language of and concept of “resealing” is drawn from laws concerning the recognition of foreign probates.

34. Other Canadian jurisdictions with similar resealing legislation are Ontario, Northwest Territories, Nunavut and Alberta.

## The Recognition of Adult Guardianship Orders from Outside the Province

---

of judgments.<sup>35</sup> The *Enforcement of Canadian Judgments and Decrees Act*<sup>36</sup> (the “*ECJDA*”) was based on the most comprehensive of the Uniform Acts and was passed by the legislature in 2003. It has not yet been brought into force. The *ECJDA* provides a mechanism for the enforcement of orders emanating from courts outside of British Columbia through a relatively straightforward registration process. A “Canadian judgment” may be registered under the *ECJDA* and enforced in British Columbia as if it were an order or judgment of, and entered in, the Supreme Court of British Columbia. “Canadian judgment” is defined as “a judgment, decree or order made in a civil proceeding by a court of a province or territory of Canada other than British Columbia.” The commentary to the *Uniform Enforcement of Canadian Judgments and Decrees Act* observed that this phrase, “covers orders that operate to define certain rights or relationships ... [which] ... might include things like adult guardianship orders.”

Therefore, under the *ECJDA*, an adult guardianship order made by a court in Canada would be recognized in British Columbia upon registration of the order in the court registry and payment of the prescribed fee. This procedure provides much the same relief as section 31 of the *Patients Property Act* and will render the Order-in-Council procedure redundant in practice if not in law. It should be noted that statutory guardianships fall outside the *ECJDA* since there is no court order on which the definition of “Canadian judgment” can operate.

### 3. Hague Convention on the International Protection of Adults

A third approach to the enforcement of extraprovincial adult guardianship orders is the 1999 Hague Convention on the International Protection of Adults (the “Convention”).<sup>37</sup> This Convention is not in force yet, and to date it has been ratified only by the United Kingdom. Article 1 provides that the Convention concerns the protection of adults in “international situations” who cannot protect their interests due to an impairment or insufficiency of their personal faculties. Article 3 of the Convention specifies, by example, and not exclusively, the measures that are the subject of the Convention, including: the determination of incapacity, guardianship, the designation and functions of any person or body having charge

---

35. The first Act, the *Uniform Enforcement of Canadian Judgments Act* addressed the interprovincial enforcement of money judgments. The second act, the *Uniform Enforcement of Canadian Decrees Act* focuses solely on non-money judgments. The third act, the *Uniform Enforcement of Canadian Judgments and Decrees Act* addresses both money judgments and non-money judgments and was intended to assist those provinces that wished to proceed with respect to both kinds of judgments in a single Act. It is the third act that has been adopted in British Columbia. The Uniform Acts are accessible at the ULCC website: <http://www.ulcc.ca/en/us/>.

36. S.B.C. 2003, c. 29, *see* Appendix C for selected provisions of this statute.

37. The text of the Convention is accessible at the Hague Conference on Private International Law website: [http://hcch.e-vision.nl/index\\_en.php?act=conventions.text&cid=71](http://hcch.e-vision.nl/index_en.php?act=conventions.text&cid=71).

---

## The Recognition of Adult Guardianship Orders from Outside the Province

---

of the adult's person or property, representing or assisting the adult and placement and administration of the adult's property.

Chapter IV (Articles 22 to 27) of the Convention deals with the recognition and enforcement of measures taken by the contracting states. Article 22 provides that the "measures taken by the authorities of a Contracting State shall be recognized by operation of law in all other Contracting States." However the Chapter goes on to stipulate a number of reasons for which recognition may be refused. Article 23 provides that any interested person may request a decision from the competent authorities on the recognition of a measure, which pursuant to Article 25, must be declared enforceable or registered for enforcement in a simple and rapid procedure.

### 4. Scenarios

The following scenarios illustrate how some of the procedures described above might function in various circumstances. Current and potential law involves the interplay of 5 distinct procedures under three different acts, two of which are not yet in force. In the scenarios, the one designated as "Potential 1" illustrates the result if the *Enforcement of Canadian Judgments and Decrees Act* was in force and "Potential 2" illustrates the result if sections 42 and 43 of the *Adult Guardianship Act* were in force.

#### Scenario 1

Order made in Ontario  
Patient and adult guardian in Ontario  
Property in British Columbia

#### Remedy

Currently - Order-in-Council under section 31 *Patients Property Act*  
Potential 1 - Register Ontario Order under *Enforcement of Canadian Judgments and Decrees Act*  
Potential 2 - Apply under *Adult Guardianship Act* to British Columbia Court to have Ontario order resealed (section 42) or for an Order-in-Council (section 43)

---

#### Scenario 2

Order made in Utopia (designated foreign jurisdiction under the *Adult Guardianship Act*)  
Patient and adult guardian in Utopia  
Property in British Columbia

#### Remedy

Currently - Adult guardian must bring a fresh application under *Patients Property Act*

---

## The Recognition of Adult Guardianship Orders from Outside the Province

---

Potential 1 - *Enforcement of Canadian Judgments and Decrees Act* would have no application

Potential 2 - Apply under *Adult Guardianship Act* to British Columbia Court to have Utopian order resealed

---

### Scenario 3

Order made in Erewhon (not a designated foreign jurisdiction under the *Adult Guardianship Act*)

Patient and adult guardian in Erewhon

Property in British Columbia

Remedy

Currently - Adult guardian must bring a fresh application under *Patients Property Act*

Potential 1 - *Enforcement of Canadian Judgments and Decrees Act* would have no application

Potential 2 - An application under the *Adult Guardianship Act* to British Columbia Court to have Erewhon order resealed would not be available

---

### Scenario 4

Order made in Ontario

Patient and adult guardian relocated to British Columbia

Property in British Columbia

Remedy

Currently - Adult guardian must bring a fresh application under *Patients Property Act*

Potential 1 - Register Ontario Order under *Enforcement of Canadian Judgments and Decrees Act*

Potential 2 - Apply under *Adult Guardianship Act* to British Columbia Court to have Ontario order resealed

---

### Scenario 5

Order made in Utopia (designated foreign jurisdiction under the *Adult Guardianship Act*)

Patient and adult guardian relocated to British Columbia

Property in British Columbia

Remedy

Currently - Adult guardian must bring a fresh application under *Patients Property Act*

---

## The Recognition of Adult Guardianship Orders from Outside the Province

---

Potential 1 - *Enforcement of Canadian Judgments and Decrees Act* would have no application

Potential 2 - Apply under *Adult Guardianship Act* to British Columbia Court to have Utopian order resealed

---

### Scenario 6

Order made in Erewhon (not a designated foreign jurisdiction under the *Adult Guardianship Act*)

Patient and adult guardian relocated to British Columbia

Property in British Columbia

Remedy

Currently - Adult guardian must bring a fresh application under *Patients Property Act*

Potential 1 - *Enforcement of Canadian Judgments and Decrees Act* would have no application

Potential 2 - An application *Adult Guardianship Act* to British Columbia Court to have Erewhon order resealed would not be available

### III. Rationalizing British Columbia Law in Relation to the Recognition of Extraprovincial Adult Guardianship Orders

#### A. Extraprovincial Adult Guardianship Orders

##### 1. Registration under the *Enforcement of Canadian Judgments and Decrees Act*

The Order-in-Council procedure found in section 31 of the *Patients Property Act* and in section 43 of the *Adult Guardianship Act (Part 2)* should be repealed. An Order-in-Council is a vehicle used to exercise power that the Legislative Assembly has delegated to Cabinet. As a way of dealing with what is essentially a straightforward problem, it is unnecessarily burdensome to both the government and the applicant. Furthermore as the scenarios above demonstrate, the current Order-in-Council procedure only addresses the limited circumstances of where the patient has property within British Columbia but the patient and adult guardian are located in a different province.

Registration under the *ECJDA* should be the sole mechanism for recognition of an adult guardianship order from another Canadian province or territory. The registration process is fairly straightforward and the result of registration would be that an adult guardianship order made by a Canadian court outside of British Columbia would be recognized in British Columbia. The *ECJDA* does not require the other jurisdiction to have adopted the *Uniform Enforcement of Canadian Judgments and Decrees Act* for recognition of the extraprovincial

## The Recognition of Adult Guardianship Orders from Outside the Province

---

order in British Columbia. This procedure would be the preferred approach in scenarios 1 and 4 set out above.

### 2. The Effect of Registration

#### (a) Application of British Columbia Committeeship Laws

If, on registration under the ECJDA, the extraprovincially appointed adult guardian becomes clothed with the full authority conferred by an appointment under local legislation, it might be seen by some as significantly weakening the protection British Columbia law gives to persons whose interests are safeguarded by adult guardianship laws. Section 10 of the *Patients Property Act* provides a number of procedural devices with that purpose including requirements as to inventories, passing of accounts and security bonding. The last of these is often regarded as most important.

**10** (1) If a committee other than the Public Guardian and Trustee has been appointed under this Act, the following rules apply:

(c) if ordered by the court, either on the person's appointment as committee or subsequently on the application of the Public Guardian and Trustee, the committee must give security for the proper performance of the committee's duties in the amount the court directs in the form of a bond that must be in the name of the Public Guardian and Trustee, approved by the Registrar of the Supreme Court, and filed with the Public Guardian and Trustee;

It appears from the decision in *British Columbia (Public Trustee) v. Macht* that the requirement of a security bond had, at the time of the decision, become routine in the appointment of committees. Taylor J.A. for the court commented:<sup>38</sup>

...it has come to be the practice in this province that those applying to be appointed committee are generally required to post security. It is a practice influenced, no doubt, by the fact that a committee normally enjoys powers in excess of those of a trustee or executor - that is to say all the powers which the patient would have had with respect to his or her property if competent - and these powers are generally exercised without supervision save for the statutory two-yearly accounting.

While the quotation from the *Macht* case may no longer be an accurate reflection of the current practice, it is our understanding that bonding is still required with sufficient frequency that it might be fairly described as "routine." Is the absence of bonding, as a routine matter, cause for concern when an adult guardianship order from another province is registered? We believe it is not for the following reasons.

First, at the highest level of generality we have significant doubts whether laws that call for the routine bonding of fiduciaries is good policy or is economically efficient. There is a striking

---

38. (1991), 53 B.C.L.R. (2d) 390 at 393 (B.C.C.A.)

## The Recognition of Adult Guardianship Orders from Outside the Province

---

absence of writing on this issue in the literature devoted to economic issues but anecdotal evidence suggests that the costs are large and the payouts are trivial in comparison. An economic cost benefit analysis of the routine bonding of fiduciaries such as committees would be enormously helpful. While the British Columbia Law Institute has not had an opportunity to consider bonding in a formal way a number of its members are skeptical as to its value. In the result, while bonding as a general issue is best left to a different study, we are reluctant to see it introduced in what we regard as a new context.

Second, the court that made the original order may well have required the posting of a bond by the guardian. The size of the bond will undoubtedly be influenced by the value of the patient's property in the jurisdiction of origin. Practice may well vary across the country as to whether the value of property located outside the jurisdiction of origin should also be taken into account. Once the courts of other provinces become fully aware that their orders potentially extend to property in British Columbia and other provinces and territories the way in which they set their bonds will likely be adjusted, to the extent necessary, to reflect that reality. To impose a routine bonding requirement in this province could well result in having to purchase two bonds in relation to the same property - a result to be avoided. In addition, underlying the ECJDA is a policy of full faith and credit in the proceedings of other Canadian courts and to impose a routine bonding requirement here would carry with it the implication that the courts of other provinces will not do their jobs properly.

Finally, registration under ECJDA does not rule out the possibility of requiring bonding or invoking the other protective measures in section 10 of the *Patients Property Act* in exceptional cases. Section 4 of ECJDA sets out the effect of registration:

4. Subject to sections 5 and 6, a registered Canadian judgment may be enforced in British Columbia as if it were an order or judgment of, and entered in, the Supreme Court.

This opens the door to an *ad hoc* application by the PGT under section 10 of the *Patients Property Act* for an order for one of the forms of protection, including bonding. If there is any doubt as to the application of section 10 to the particular circumstances, the ECJDA provides, in section 6, for an application for directions:

- 6 (1) A party to the proceeding in which a registered Canadian judgment was made may apply to the Supreme Court for directions respecting its enforcement.
- (2) On an application under subsection (1), the court may
  - (a) make an order that the judgment be modified as may be required to make it enforceable in conformity with local practice,
  - (b) make an order stipulating the procedure to be used in enforcing the judgment, or
  - (c) make an order staying or limiting the enforcement of the judgment, subject to any terms and for any period the court considers appropriate in the circumstances, if
    - (i) such an order could be made in respect of an order or judgment of the Supreme Court under the Rules of Court or any enactment relating to legal remedies and the enforcement of orders and judgments,

## The Recognition of Adult Guardianship Orders from Outside the Province

---

- (ii) the party against whom enforcement is sought has brought, or intends to bring, in the province or territory where the Canadian judgment was made, a proceeding to set aside, vary or obtain other relief in respect of the judgment,
- (iii) an order staying or limiting enforcement is in effect in the province or territory where the Canadian judgment was made, or
- (iv) the judgement is contrary to public policy in British Columbia.

An amendment to the *Patients Property Act* is probably desirable to put beyond any doubt the ability of the PGT to invoke these procedures. We reiterate our view that section 10 should not be invoked in relation to an extraprovincially appointed guardian except in exceptional circumstances where the PGT has reason to believe the property or the person of the patient is in jeopardy.

### *(b) Continuing Application of the Laws of the Place of Origin*

Registration under the *ECJDA* would not operate so as to displace the law under which the appointment of the guardian was made. For example, the situation may involve an Ontario order with the patient and the guardian of the estate being in Ontario. The property, on the other hand, is in British Columbia. The guardian was appointed by an Ontario court under s. 22 of Ontario's *Substitute Decisions Act, 1992*<sup>39</sup> and section 32(10) of the statute requires the guardian to act in accordance with the management plan established for the property. The *Patients Property Act* of British Columbia contains no provisions concerning a management plan for the property. Registration under the *ECJDA* would not displace the duties and obligations that bind the Ontario appointed guardian by the terms of the original order and the statute under which it was made.

It is possible that rare cases may arise where there is an unavoidable conflict between the adult guardian's duties arising under British Columbia law and the law of the jurisdiction under which the appointment was made leaving the adult guardian in an untenable position. In such a case, an application to the court for directions under section 6 of the *ECJDA* would be appropriate.

## **B. Statutory Committees**

Statutory committees call for special consideration. A number of provinces and territories have adopted an approach comparable to the British Columbia Certificate of Incapability procedure described earlier under which the public trustee service in the jurisdiction assumes the role of committee of estate of the patient. The recognition of an extraprovincial statutory committee requires special treatment because there is no court order to register under the *ECJDA* as with a court appointed committee. The solution we suggest is to allow an extraprovincial statutory committee to complete a certificate in prescribed form setting out the relevant facts and authority which brought the adult guardianship into being. This certificate could then be made registrable under the *ECJDA* as if it were a court order. This solution should be limited to circumstances

---

39. S.O. 1992, c. 30

## The Recognition of Adult Guardianship Orders from Outside the Province

---

where the patient remains in the non-British Columbia jurisdiction but has property in British Columbia.

### C. Non-Canadian Orders

The Hague convention does not, at this time, provide a suitable vehicle for the enforcement of foreign orders. The Convention has not been widely adopted. Currently, only the United Kingdom is a signatory. Furthermore, the design of the convention, being based on a convention concerned with the protection of children, is far more complex than the subject matter requires

Our preferred solution is to amend the *Patients Property Act* by adopting the “resealing approach” found in (unproclaimed) section 42 of the *Adult Guardianship Act (Part 2)* but with its operation confined to non-Canadian orders only. A person seeking recognition and enforcement of a non-Canadian order would then apply to the British Columbia court to reseal the foreign order. The foreign order would then be treated as if it were an order made under the British Columbia *Patients Property Act*. “Resealing” is an antique term, used mainly in relation to the procedure for the recognition of foreign probates.<sup>40</sup> While the procedure in relation to the resealing of foreign probates will provide some guidance as to the procedure that might be adopted with respect to adult guardianship orders, we believe more modern terminology is desirable. The term “confirmation” should be adopted in preference to “resealing” to describe the procedure. It is also appropriate that the PGT be given notice of any application for the confirmation of a non-Canadian order.

Section 42 of the *Adult Guardianship Act (Part 2)* would apply only to a “prescribed jurisdiction” outside Canada. Given the degree of judicial oversight embodied in the resealing procedure we do not believe the concept of “prescribed jurisdictions” serves a useful purpose and would abandon it. The confirmation procedure should be available for all non-Canadian orders.

Neither the *ECJDA* registration procedure for orders from another Canadian province or territory nor the confirmation procedure for non-Canadian orders should limit the applicant’s ability to bring a fresh application under the *Patients Property Act* to the court for the appointment of a committee.

---

40. *Probate Recognition Act*, RSBC 1996 c. 376. This procedure is available for certain non-Canadian orders.

### IV. Recommendations

The British Columbia Law Institute recommends that:

1. When the *Enforcement of Canadian Judgments and Decrees Act* is brought into force it should serve as the sole mechanism for the recognition, in British Columbia, of adult guardianship orders originating in other provinces and territories of Canada. At that time, section 31 of the *Patients Property Act* should be repealed.
2. Sections 42 and 43 of the *Adult Guardianship Act (Part 2)* should not be brought into force.
3. The *Patients Property Act* should be amended to:
  - (a) Provide for the registration, under the *Enforcement of Canadian Judgments and Decrees Act*, of certificates evidencing a statutory guardianship of a public trustee or similar official in a Canadian province or territory outside of British Columbia with the effect of registration limited to dealing with property in British Columbia,
  - (b) Provide a mechanism, similar to that which exists for the resealing of probates, for the confirmation of adult guardianship orders originating outside Canada, and
  - (c) Clarify the rights of the Public Guardian and Trustee in relation to orders registered under the *Enforcement of Canadian Judgments and Decrees Act* and applications for the confirmation of a non-Canadian adult guardianship order.

Draft Legislation to implement recommendation 3 is set out in Appendix D.

## Appendices

### Appendix A

*Patients Property Act*, R.S.B.C. 1996, c. 349  
(selected provisions)

#### **Definitions**

**1** In this Act:

“**patient**” means

- (a) a person who is described as one who is, because of mental infirmity arising from disease, age or otherwise, incapable of managing his or her affairs, in a certificate signed by the director of a Provincial mental health facility or psychiatric unit as defined in the *Mental Health Act*, or
- (b) a person who is declared under this Act by a judge to be
  - (i) incapable of managing his or her affairs,
  - (ii) incapable of managing himself or herself, or
  - (iii) incapable of managing himself or herself or his or her affairs;

#### **Inventory, security and accounts**

- 10** (1) If a committee other than the Public Guardian and Trustee has been appointed under this Act, the following rules apply:
- (a) [Repealed 2003-37-38.]
  - (b) if property belonging to the patient is discovered after the first passing of accounts under paragraph (d) and that property is valued at \$25 000 or more, the committee must, within 30 days of the discovery of the property, deliver to the Public Guardian and Trustee a true account of the property as it is discovered;
  - (c) if ordered by the court, either on the person's appointment as committee or subsequently on the application of the Public Guardian and Trustee, the committee must give security for the proper performance of the committee's duties in the amount the court directs in the form of a bond that must be in the name of the Public Guardian and Trustee, approved by the Registrar of the Supreme Court, and filed with the Public Guardian and Trustee;

## The Recognition of Adult Guardianship Orders from Outside the Province

---

- (d) the committee must pass the committee's accounts before the Public Guardian and Trustee at the times directed by the Public Guardian and Trustee, including, if the Public and Guardian Trustee requires it, a true inventory of the whole estate of the patient, stating the estimated revenue of it and setting out the debts, credits and effects of the patient to the extent they have come to the knowledge of the committee;
  - (e) if required by the Public Guardian and Trustee, the committee must pass the accounts before the Supreme Court in the county in which the committee was appointed committee.
- (2) A committee may at any time appeal the passing of accounts by the Public Guardian and Trustee to the Supreme Court.

### **Effect on power of attorney or certain representation agreements of person becoming a patient other than by court order**

- 19.1** (1) On a person becoming a patient as defined in paragraph (a) of the definition of "patient" in section 1, the following are suspended:
- (a) every power of attorney that was given by the person;
  - (b) every provision of a representation agreement made by the person in respect of his or her property unless the representation agreement is one referred to in section 19.2 (1) (b).
- (2) After receiving a copy of the suspended power of attorney or of a representation agreement any provision of which has been suspended under subsection (1) and any information that the Public Guardian and Trustee may require, the Public Guardian and Trustee must determine whether it is necessary or desirable for the Public Guardian and Trustee to manage the patient's property under this Act.
- (3) If the Public Guardian and Trustee determines that it is necessary or desirable for the Public Guardian and Trustee to manage the patient's property, then on the making of the determination
- (a) the power of attorney that was suspended under subsection (1) is terminated, or
  - (b) the provisions of the representation agreement that were suspended under subsection (1) are cancelled, as the case may be.
- (4) If the Public Guardian and Trustee determines that it is not necessary or desirable for the Public Guardian and Trustee to manage the patient's property,

## The Recognition of Adult Guardianship Orders from Outside the Province

---

- (a) the Public Guardian and Trustee's authority as committee under the certificate referred to in paragraph (a) of the definition of "patient" in section 1, is terminated on the making of that determination, and
- (b) the suspension of the power of attorney or of the provisions of the representation agreement ends on the termination of the Public Guardian and Trustee's authority as committee.

### Persons outside British Columbia

- 31**
- (1) If a person resident in another province who would be, if resident in British Columbia, a patient as defined under this Act has estate in British Columbia, the Lieutenant Governor in Council may appoint the person who is charged with the duty of managing, handling, administering or caring for the estate of that person in that province to be the committee of the estate of the person in British Columbia.
  - (2) The order in council making an appointment under subsection (1) is conclusive evidence that all conditions precedent to the appointment have been fulfilled.
  - (3) Every person appointed a committee under subsection (1)
    - (a) has as committee in respect to the estate of the person in British Columbia the same rights, powers, privileges and immunities as are conferred by this Act on the Public Guardian and Trustee as committee of a patient in British Columbia, and
    - (b) is subject to the same obligations and must perform the same duties and this Act applies to the person in the same manner as to the Public Guardian and Trustee acting as the committee of the estate of the person.
  - (4) All acts of a person appointed committee under this section are binding in all courts and land title offices in the same manner and to the same extent as the acts of the Public Guardian and Trustee acting as the committee of the estate of a patient are binding.

Appendix B

*Adult Guardianship Act, R.S.B.C. 1996, c. 6*

(Sections 42 and 43; not in force)

**Orders from outside British Columbia**

- 42** (1) In this section “foreign order” means an order that a court outside British Columbia makes and that appoints a person to carry out duties comparable to those of a decision maker or guardian.
- (2) Any person may apply to the Supreme Court for an order resealing a foreign order that was made
- (a) in a province or territory of Canada, or
  - (b) in a prescribed jurisdiction outside Canada.
- (3) The Supreme Court may order the foreign order to be resealed if the applicant files with the court
- (a) a copy of the foreign order bearing the seal of the court that made it or a copy of the foreign order certified by the registrar or other officer of the court that made it, and
  - (b) a certificate signed by the registrar or other officer of the court that made the foreign order stating that the order is unrevoked and of full effect.
- (4) A foreign order that has been resealed
- (a) has the same effect in British Columbia as if it were an order made under this Act appointing a decision maker or guardian,
  - (b) is subject in British Columbia to any condition imposed by the Supreme Court that the court may impose under this Act on an order appointing a decision maker or guardian, and
  - (c) is subject in British Columbia to the provisions of this Act respecting decision makers or guardians.

**Appointment of persons outside British Columbia**

- 43** (1) If an adult who is resident in another province or territory has assets in British Columbia, the Lieutenant Governor in Council may appoint as substitute decision maker or guardian for those assets the person who has, for the adult’s assets in the other

## The Recognition of Adult Guardianship Orders from Outside the Province

---

province or territory, duties comparable to those of a substitute decision maker or guardian under this Act.

- (2) An order in council under subsection (1) is conclusive evidence that all conditions precedent to the appointment have been fulfilled.
- (3) A person appointed as substitute decision maker or guardian under subsection (1),
  - (a) has, for the adult's assets in British Columbia, the same duties, powers, functions, privileges and immunities as those of a substitute decision maker or guardian appointed by the court under this Act, and
  - (b) is subject in British Columbia to the provisions of this Act respecting substitute decision makers or guardians.
- (4) Anything done by a person appointed by order in council under this section is binding in all courts and land title offices as if it were done by a substitute decision maker or guardian appointed by the court.

### Appendix C

#### *Enforcement of Canadian Judgments and Decrees Act*

S.B.C. 2003, c. 29

( not in force; selected provisions)

#### **Definitions**

**1** In this Act:

“Canadian judgment” means a judgment, decree or order made in a civil proceeding by a court of a province or territory of Canada other than British Columbia

- (a) that requires a person to pay money, including
  - (i) an order for the payment of money that is made in the exercise of a judicial function by a tribunal of a province or territory of Canada other than British Columbia and that is enforceable as a judgment of the superior court of unlimited trial jurisdiction in that province or territory, and
  - (ii) an order made and entered under section 741 of the *Criminal Code* in a court of a province or territory of Canada other than British Columbia,
- (b) under which a person is required to do or not do an act or thing, or
- (c) that declares rights, obligations or status in relation to a person or thing,

## The Recognition of Adult Guardianship Orders from Outside the Province

---

but does not include a judgment, decree or order that

- (d) is for maintenance or support, including an order enforceable under the *Family Maintenance Enforcement Act*,
- (e) is for the payment of money as a penalty or fine for committing an offence,
- (f) relates to the care, control or welfare of a minor,
- (g) is made by a tribunal of a province or territory of Canada other than British Columbia, whether or not it is enforceable as an order of the superior court of unlimited trial jurisdiction of the province or territory where the order was made, to the extent that it provides for relief other than the payment of money, or
- (h) relates to the granting of probate or letters of administration or the administration of the estate of a deceased person;

### Right to register Canadian judgment

- 2 (1) Subject to subsection (2), a Canadian judgment, whether or not the judgment is final, may be registered under this Act for the purpose of enforcement.

....

### Effect of registration

- 4 Subject to sections 5 and 6, a registered Canadian judgment may be enforced in British Columbia as if it were an order or judgment of, and entered in, the Supreme Court.

### Application for directions

- 6 (1) A party to the proceeding in which a registered Canadian judgment was made may apply to the Supreme Court for directions respecting its enforcement.
- (2) On an application under subsection (1), the court may
- (a) make an order that the judgment be modified as may be required to make it enforceable in conformity with local practice,
  - (b) make an order stipulating the procedure to be used in enforcing the judgment, or
  - (c) make an order staying or limiting the enforcement of the judgment, subject to any terms and for any period the court considers appropriate in the circumstances, if
    - (i) such an order could be made in respect of an order or judgment of the Supreme Court under the Rules of Court or any enactment relating to legal remedies and the enforcement of orders and judgments,

## The Recognition of Adult Guardianship Orders from Outside the Province

---

- (ii) the party against whom enforcement is sought has brought, or intends to bring, in the province or territory where the Canadian judgment was made, a proceeding to set aside, vary or obtain other relief in respect of the judgment,
  - (iii) an order staying or limiting enforcement is in effect in the province or territory where the Canadian judgment was made, or
  - (iv) the judgement is contrary to public policy in British Columbia.
- (3) Notwithstanding subsection (2), the Supreme Court must not make an order staying or limiting the enforcement of a registered Canadian judgment solely on the grounds that
- (a) the judge, court or tribunal that made the judgment lacked jurisdiction over the subject matter of the proceeding that led to the judgment, or over the party against whom enforcement is sought, under
    - (i) principles of private international law, or
    - (ii) the domestic law of the province or territory where the judgment was made,
  - (b) the Supreme Court would have come to a different decision on a finding of fact or law or on an exercise of discretion from the decision of the judge, court or tribunal that made the judgment, or
  - (c) a defect existed in the process or proceeding leading to the judgment.
- (4) An application for directions must be made under subsection (1) before any measures are taken to enforce a registered Canadian judgment if
- (a) the enforceability of the judgment is, by its terms, subject to the satisfaction of a condition, or
  - (b) the judgment was obtained without notice to the persons bound by it.

Appendix D  
Draft Legislation

**Bill XX, 2005**  
**Patients Property (Amendment) Act, 2005**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

1. The *Patients Property Act*, R.S.B.C. 1996, c. 349, is amended by adding the following sections:

- XX1** (1) In this section, “foreign order” means an order made by a court outside Canada appointing a person to carry out duties comparable to those of a committee of property, committee of the person or both.
- (2) Any person may apply to the Supreme Court for an order confirming a foreign order.
- (3) An order confirming a foreign order may be made subject to any term or condition that the court may impose under this Act in an order appointing a committee of property or committee of the person, as the case may be.
- (4) Notice of an application under subsection (2) must be given to the Public Guardian and Trustee.
- (5) An application under subsection (2) must be accompanied by:
- (a) a copy of the foreign order bearing the seal of the court that made it or a copy of the foreign order certified by the registrar or other officer of the court that made it,
  - (b) a certificate signed by the registrar or other officer of the court that made the foreign order stating that the order is unrevoked and of full effect.
  - (c) a translation of the order and the certificate if they are in a language other than English, and
  - (d) any other matter prescribed by regulation.

## The Recognition of Adult Guardianship Orders from Outside the Province

---

- (6) A foreign order that has been confirmed
  - (a) has the same effect in the province as if it were an order made under this Act appointing a committee of property or committee of the person, or both; and
  - (b) is subject in the province to the provisions of this Act respecting a committee of property or a committee of the person, as the case may be.

**XX2** Where a public trustee or similar official of a Canadian province or territory outside of the province assumes control of a person's estate by operation of a law relating to adult guardianship, a certificate in prescribed form by that official may be registered under the *Enforcement of Canadian Judgments and Decrees Act* as if it were a Canadian judgment and, when registered, takes effect as if it were an order of a court having jurisdiction in that province or territory appointing the official as the guardian of the person's property.

**XX3** (1) Where an adult guardianship order made outside the province takes effect through a registration under the *Enforcement of Canadian Judgments and Decrees Act* or through a confirmation under section XX1 the Public Guardian and Trustee may apply to the court for an order that the committee do any of the things set out in section 10 [of the Patients Property Act].

- (2) Where an adult guardianship order made outside the province takes effect through a registration under the *Enforcement of Canadian Judgments and Decrees Act*, the Public Guardian and Trustee is deemed to be a party to the proceeding who is entitled to apply for directions under section 6 of that Act.

## The Recognition of Adult Guardianship Orders from Outside the Province

---

### OUR SUPPORTERS

The British Columbia Law Institute wishes to thank all those individuals and firms who have recently provided financial support.

#### Partner

The Advocate

Canadian Bar Association, B.C. Branch

#### Benefactor

James M. MacIntyre, Q.C.

Hon. Mr. Justice Grant D. Burnyeat

Blake, Cassels & Graydon LLP

Borden Ladner Gervais LLP

Steele Urquhart Payne

Stikeman Elliott LLP

Lawson Lundell

#### Associate

Hon. Bryan Williams, Q.C.

Hon. Martin Taylor, Q.C.

Hon. Chief Justice Donald C.J. Brenner

Hon. Mdm. Justice M. Anne Rowles

Hon. Mdm. Justice Risa Levine

Fasken Martineau DuMoulin LLP

#### Supporter

Hon. Chief Justice Lance G. Finch

Hon. Mr. Justice Randall S.K. Wong

Kerry-Lynne D. Findlay Chapman, Q.C.

Gerald J. Lecovin, Q.C.

Donald J. Sorochan, Q.C.

#### Friend

Hon. Mdm. Justice Carol Huddart

Master Ronald Barber

Hon. Mr. Justice Duncan Shaw

Margaret Ostrowski, Q.C.

Hon. Mr. Justice Kenneth Smith

Taylor Jordan Chafetz

Hon. Mr. Justice Frank Maczko

Ian Donaldson, Q.C.

Hon. Mdm. Justice Marion Allan

J. Parker MacCarthy, Q.C.

Hon. Mdm. Justice Heather Holmes

Arthur Close, Q.C.

Hon. Judge David R. Pendleton

Hon. Mdm. Justice Kirsti M. Gill

Hon. Associate Chief Judge Anthony J. Spence

T. Murray Rankin, Q.C.

Hon. Mdm. Justice Sunni S. Stromberg-Stein

Hon. D.M.M. Goldie, Q.C.

Hon. Mr. Justice Kenneth C. Mackenzie

Hon. W.A. Esson

AnnaMarie Laing

Gregory G. Blue

Trevor Todd

Gordon Sloan

Waddell Raponi

Karen Nordlinger, Q.C.

#### Anonymous Donations

#### Support in Kind

Faculty of Law, University of British Columbia

Bull Houser & Tupper