

THE PROJECT TO REVIEW ADULT GUARDIANSHIP

Newsletter

FALL 1993

Implementation of Adult Guardianship Legislation Opening A New Door for the Community

In the Spring issue of the Newsletter we described the process that was transforming the ideas in "How Can We Help?" into four separate Acts to reform adult guardianship legislation in B.C. In July 1993 these four Acts: The Representation Agreement Act; the Health Care (Consent) and Care Facility (Admission) Act; the Adult Guardianship Act and the Office of the Public Guardian and Trustee Act were passed by the Legislature in Victoria.

Now these four Acts must be implemented or put into effect before they become law. Implementation is the period of time when all of the policies, procedures, regulations and community resources are put into place so that the new Acts can work.

The Project to Review Adult Guardianship has co-ordinated the community's efforts over the four years of law reform. With the generous financial assistance of the Law Foundation and the Notary Foundation and the sponsorship of the B.C. Association of Community Living and the Community Legal Assistance Society, the project has given voice to the many ideas and diverse groups and individuals who have been part of this unique community driven law reform process. Now, as the implementation process begins, the Project will end. However as one door closes, others are opening.

The work of the Project over the last few months has been to enable

See "Opening a New Door" on page 2



Tom and Norma Klopp, two long-standing members of the Guardianship Committee

INSIDE

| | |
|---|------|
| The Legislative Debate: An Eyewitness Account | 2-3 |
| A Community Party | 4 |
| A Report on the Community Session of the Planning Forum | 5-8 |
| Representation Agreements: From the Ground Up | 9-10 |
| A Network of Advocacy | 10 |
| Understanding Capacity: A Proposal for a Pilot Project | 11 |
| Forging a Community Coalition for Implementation | 12 |

**"Opening a New Door"
continued from page 1**

the community to take hold of the implementation period just as it did during the law reform process.

In this issue of the Newsletter you will read about some of the ideas that community members are trying out during implementation. Ideas like a provincial advocacy network, a ground-up approach to designing representation agreements, and a pilot project that integrates personal support and advocacy with assessment of needs and assistance and capability.

Wrapping up all of these initiatives is the plan to forge a new community coalition that will guard the vision that drew so many people together to change adult guardianship law in B.C. At the heart of this vision is the belief that all adults are entitled to self-determination and that communities need to provide all of the support and assistance that they can to enable individuals to maintain their independence wherever possible and for as long as possible. It is a vision of the community as a place where people are not labelled, where the caring and helping of family, friends, neighbours and peers is honoured and where people who have been spoken for find their own voice.

An implementation of guardianship legislation that is loyal to this vision will be one more step in a community effort to create social change that has been remarkable in its determination and its resilience.

The Legislative Debate: An Eyewitness Account

Visiting the Members' Gallery of the B.C. Legislature on July 14 and 15, 1993, promised to be both exciting and significant. I was there to hear the House, sitting as Committee of the Whole, debate three of the four Bills on which we had all worked so hard. The fourth Bill, Health Care (Consent) and Care Facility (Admission) Act, had already been debated the day before and I had watched the proceedings on television. Then we had learned that the remaining three Bills would probably come to debate the following day and I had booked my seat to Victoria.

Watching parliamentary debate on television is one thing, being in the Gallery of the House is another. The attendant pomp and ceremony, protocol and procedure, in the dignified traditional setting, lend weight and importance to the proceedings that the small screen doesn't capture. Since my responsibilities as spokesperson for the Christian Science Church in B.C. include legislative issues, PRAG was happy to allow me to combine its interests with my own and present myself at the Attorney General's office on Wednesday morning for admission to the Members' Gallery. I also let the Opposition parties know that PRAG was represented in the Gallery for the debate.

Up the three flights of stairs to the doors to the Gallery, I learned that tradition prohibits the visitor from having any papers or from reading or writing anything. This meant that I had to leave my copies of the three Bills in my briefcase with the Sergeant at Arms' staff and rely on memory. I'd felt I practically knew the Acts by heart, having helped PRAG review them for amendments after First Reading, but hadn't realized there would be a test!

Although the day's Sitting had begun in early afternoon, it was after 9:00 p.m. when "our" Bills came to debate, beginning with the Representation Agreement Act. By that time, I had long since been the only person left in the Gallery, an object of some curiosity to the staff.

The debate on all the guardianship Bills was very interesting for anyone familiar with the months and years of discussion leading up to this moment. The Opposition members raised, I felt, useful and relevant questions regarding some of the important issues, such as capacity, which served to inform and clarify. Following First Reading of the four Bills, PRAG's Legislative Review Committee had submitted over ninety amendments to the Attorney General. Many of

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these were on the order paper and were approved.

By about 10:30 that evening, Bill 48, the Representation Agreement Act, was "reported complete with amendments." Surely, I thought, they will now adjourn until morning. Don't they realize how hard these wooden Gallery seats are. Apparently not. Debate opened on the largest of the bills Adult Guardianship Act, and continued for another 45 minutes before adjournment for the night.

Next morning saw me back in my seat when the House met at 10:00 a.m. Was it my imagination, or were the Sergeant at Arms' staff now giving me pitying glances? Continuing debate on the Adult Guardianship Act was the first item on the order paper and I leaned forward so as not to miss a word. Seeing this, two tourists from Oregon seated next to me learned forward eagerly too. After listening for several minutes they leaned back again, looking at me with mildly puzzled frowns.

Having been very actively involved in the development of both the "How Can We Help?" paper and the legislation itself, I was enjoying every nuance of the to and fro of debate on issues so familiar to those of us involved with the Project. When the matter of mandatory reporting of abuse and neglect was raised and put to the vote, I breathed an emphatic "Good!". The Oregon tourists asked me in a whisper what they were missing; I explained in a whisper that this was a question about which strong feelings had been expressed in the community, both pro and con, and that it was right that the democratic process should be played out to its full extent by having a vote in the House. They nodded in comprehension.

By 1:00 p.m. the debate was over on both the Adult Guardianship Act and the Public Guardian and Trustee Act. Now all four Acts could move ahead to Third Reading and Royal Assent.

As I left the Gallery to meet a couple of MLA's who had invited me

to lunch, I found myself feeling quite emotional. It was finally over. All the hundreds of hours of meetings and discussion by so very many people, volunteers and government personnel alike, had actually come to this - four Acts representing very substantial changes for the better, I believe, in the law of British Columbia. In those few moments on the stairs, I found myself very grateful for all the work by everyone involved, for the high level of commitment and goodwill, and for the spirit of compromise that had so often prevailed in community and government alike. It seemed to me a little like a birth, with gratitude that an important phase is over successfully, but with an awareness that the child's development will need lots of support and protection.

By the time I came to shake hands with the two MLA's, I was dabbing at my eyes with a tissue. They understood. In fact, Mr. Gabelmann confided, he'd seen a few damp eyes amongst the government people too.

Honor Hill

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A Community Party

On July 12, 1993 over 100 people gathered at Heritage Hall to celebrate the introduction of the guardianship legislation.

It was a chance for the Project to play host to many of the community members who have given countless hours and a never-ending supply of good ideas to the law reform process.

*There was music, there was dancing and lots of good food.
Here are a few scenes from that warm summer night night.*



*Russell Hunter with
Millie and Jack Canessa*



*(Standing, l-r) Wendy Allen, Phil Allen, Ken McLean
(Sitting, l-r) Gerry Juzenas, Ludo Van Pelt, Patti Van
Pelt, Betty Fichel*



Sherry Pullman and Grieg Lea

Community Representatives set Priorities for Implementation: A Report on the Community Session of the Planning Forum

The four acts that reform adult guardianship, the Representation Agreement Act, the Health Care (Consent) and Care Facility (Admission) Act, the Adult Guardianship Act and the Public Guardian and Trustee Act received Royal Assent in July 1993.

Before these acts can be proclaimed or put into effect there must be a period of implementation. Implementation is the time during which the policies, procedures, regulations and community resources are put into place so that the new legislation will actually work. Implementation of the whole package of guardianship legislation might take up to three years.

In an effort to discover how the community can be involved in the implementation process and how community and government can work together to meet priorities, a planning forum was held on September 27, 28 and 29, 1993 in Vancouver. **This is a brief report on the community session of this planning forum.**

During the first day of the forum, 128 representatives of groups and organizations that are affected by the legislation met together to determine both the commitment of the community to participate in im-

There was consensus that the mission of the community should be to establish a continuum of support and assistance that will enable adults to exercise every opportunity to use supported decision-making as an alternative to formal, public guardianship.

plementation and the priorities for action.

It was a hectic day. First, community members received a briefing on the highlights of the legislation and the history of the community coalition that led the law reform process. Then there was a panel discussion about several different ways to go about implementing various aspects of the legislation.

Robert Pepper-Smith talked about how to pilot a community-based way to assess needs and capability. Joanne Taylor outlined the objectives of the Representation Agreements Task Force in holding workshops to design Representation Agreements from the ground-up. (Highlights of both of these projects appear in this issue of the Newsletter) Laurel Kimbley of the Kettle Friendship Centre described the use of popular education in assisting consumers of mental health services to become self-advocates and

Pearl McKenzie outlined how North Shore Community Services approaches the provision of community-based advocacy and rights information. The theme of this panel was that many essential elements of the new legislation will have to be rooted in sound community development that focuses on building the skills of consumers and enabling their experience to guide the development of practice and policy.

Forum participants then went into small groups to work on determining the priorities for implementation and the ways in which they could see themselves and their organizations becoming involved.

In the plenary session that summarized the work of small groups, a consistent vision for the community's role in implementation emerged. There was consensus that the mission of the community should be to establish a continuum of support and assistance that will enable adults to exercise every opportunity to use supported decision-making as an alternative to formal, public guardianship. Included in this continuum is the informal personal support of families, friends and neighbours, more formally created personal support networks, self-advocacy, com-

continued on page 6

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Kathleen Cunningham and Kathy Hamilton at the Planning Forum

Planning Forum: Community Session

munity-based advocacy, rights information and legal advocacy, quick community-based responses to abuse and neglect, accessible and useful representation agreements and fair and practical ways to assess needs and capability. If all of the elements of this chain of support are in place, it will be possible in most cases for adults to meet their needs within the community and to avoid public guardianship.

A number of principles were established to guide the mission. Here are some of the key principles that were outlined:

- Wherever possible, consumers should develop the skills and knowledge to play a leadership role in implementation.
- Policies, procedures, protocols and regulations should emerge from the ground-up, based on the experiences and needs of people who are affected.
- Information and education campaigns should be led by community groups using methods that are accessible to their constituencies like plain language, popular education and citizen forums.

- All of the elements of the new legislation should be considered as a whole during implementation. For example, Representation Agreements should be tied to the provision of personal supports, while Consent to Health Care needs to be linked to representation agreements and the fair assessment of needs and capability. In other words, action must proceed on all fronts if the principle of public guardianship as a last resort is to be realized.

Along with these principles several priorities were identified for the implementation period:

- The Representation Agreements Task Force that is currently working on designing agreements from the ground-up should be promoted and expanded.

- A provincial advocacy network should be established and advocacy should be incorporated into pilot projects on needs and capability, health care consent and community response networks.
- The Mental Health Act should be aligned with Adult Guardianship Legislation.
- A pilot of community-based advocacy, personal support and needs and capability assessment should be established.
- There should be a community voice for implementation with an independent community coordinating office.

People who are most affected by the legislation like seniors, consumers of mental health services and people with disabilities played an active role at the session. Although they expressed their need to take different approaches to working within their respective communities, they were united in their call for the voice and experience of consumers to be central in the implementation of guardianship legislation.

People from the community need to know their bottom line and then they must be prepared to defend it. They must also work with a transparent process of representation and decision-making, eliminating as many barriers as possible so that community and government representatives are on an equal footing.

Planning Forum: Community Session

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Participants at the community planning session then looked at ways to establish a meaningful partnership with government in order to meet these priorities. A panel of three community members, Judy Carter-Smith, Margo Massie and Tyhson Banighen talked about their experiences with government partnership and offered lessons for the guardianship legislation implementation.

Judy Carter-Smith, the Executive Director of the B.C. Association of Community Living, outlined the importance of ensuring a shared set of values and principles before government and community engage in partnership. There must be an effort, she said, to operate consistently within this value base and refer back to it frequently as a guide to any joint undertaking.

Margo Massie, the President of the B.C. Coalition of Persons with Disabilities, urged community representatives to any government advisory bodies to remember who they represent and to look for the support that they need to advocate for these interests even when the going gets tough. She also recommended that community members develop structures that will enable them to be accountable to their communities for the decisions that are made at partnership tables.

Tyhson Banighen of Turtle Island Earth Stewards, shared the experience of the environmental movement with the CORE process and environmental round tables. What will be essential to successful community/government partnership, he said, will be for community members to become skilled in negotiation. People from the community need to know their bottom line and then they must be prepared to defend it. They must also work with a transparent process of representation and decision-making, eliminating as many barriers as possible so that community and government representatives are on an equal footing. The ultimate goal, he said, will be to achieve community control over decision-making with independent sources of financial support to enable that control.

Community participants were left with a very short time to assimilate this information and to try and draw some conclusions from it. There was a widely held belief that the next step in the implementation process should be to draw up a partnership agreement with government that would incorporate beliefs, values and principles into standards of performance that will ensure a level playing field for both community and government representatives during any joint implementation initiatives.

continued on page 8

A plenary session at the Planning Forum





Planning Forum: Community Session

In addition to the need for a cohesive framework for partnership, community participants made five recommendations for immediate action:

- An independent community voice should be assured throughout implementation with an independent community office playing a co-ordinating role.
- A representation agreements task force should be established.
- A citizen awareness task force should be established to begin public education.
- Pilot projects on the assessment of needs and capability and community response to abuse and neglect should be established.
- There should be funding for consumer-led initiatives in education, advocacy and the creation of personal support.
- there was a strong consensus about the vision and mission for a community role in the implementation of the legislation;
- there was an agreement about the principles that should guide the implementation process;
- a number of priorities for action were identified;
- a network of individuals and organizations around the province were poised to become involved in implementation;
- several of the challenges of implementation were identified (for example, developing a partnership framework with government and securing the financial resources to do community development);
- there was commitment to maintaining an independent community voice for implementation.

The community session ended with a number of objectives accomplished:

As soon as the community session ended, a joint session with government representatives from several Ministries began.

Nine workshops on various elements of the legislation, ranging from Representation Agreements to court appointed decision-makers, were held with participation from both the com-

munity and government sectors. Each workshop made a series of recommendations on the priorities and structures that could advance the implementation process in each of these areas. A listing of these recommendations can be found in the Proceedings of the Planning Forum which will be available to all participants in mid-December.

An interim committee of government, community and consumer representatives was struck to recommend a nomination process for members of an ongoing steering committee for implementation. This committee's report is expected by the end of the year.

Postscript: Since the September Planning Forum there has been a great deal of activity by community members to do the work that will be needed to develop the recommendations. Some of these activities are described in this Newsletter.

Representation Agreements: From the Ground Up

Our approach

Under the sponsorship of the Project to Review Adult Guardianship's Education & Research Committee, a small group of people has begun to work on the implementation of Representation Agreements.

Our task group has taken a GROUND-UP approach to the implementation of Representation Agreement legislation. Guided by the principles in "How Can We Help?" and other principles discussed at the September planning forum on the implementation of guardianship legislation (openness, trust, respect, inclusion, sharing of information, diversity) we decided the first step in our work must be to gather information from the community BEFORE writing regulations, developing policies and procedures or designing the perfect form.

Why this approach

We think if you build a new system by starting at the top or in the middle, it will probably collapse and fail. First, you need a good solid foundation and lots of SUPPORTS. Support comes from talking with people. If the people help build it (from the ground-up), we'll have a system supported by the people and one that really supports the people.

If the Representation Agreement form and system are to be accessible and "user friendly" then we need to START with the needs and wishes of "the users" (just like the Representative must start with the adult's wishes!). Also, now that we have the legislation, it's important to check back with the community and make sure we're on track as we put the legislation into practice.

Our first steps : gathering information

The task group is gathering information by meeting with **primary users**, people who would be a "Grantor" of a Representation Agreement - **AND** - with **people who would be someone's Representative**. This is only a partial list of people/groups we have met with or plan to meet with:

- Family Caregiver's Network & Alzheimer Information Centre in Victoria
- Christian Science
- Network of Burnaby Seniors
- Vietnamese community workers (to plan a session for Vietnamese Seniors)
- Latin American community workers (to plan ways to reach out to the Hispanic community)
- 411 Seniors Centre counsellors
- Self-Advocates
- Choice for Dying

Some of the questions we are asking

What do you want a Representation Agreement to do?

Who would you choose as your Representative(s)?

What powers do you want to give your Representative(s)?

Some of the answers (and questions) we are getting

- I want the Standard Representation Agreement to take care of my routine personal, financial and health care affairs as well as be my living will.
- I want to give powers and instructions for my Representative to look after my pets.
- I think there should be some safeguards but maybe not a person to "monitor" the Representative, it might hurt the relationship.
- I live alone, I don't have any family, who will be my Representative? Will someone help me find a Representative?
- I didn't realize before how much control I have, this is very important and serious and people need to think about it before they choose a Representative or agree to be one for somebody else.
- Who will have access to the information in a Representation Agreement?

Where do we go from here?

We want to have more meetings with the community. We learn a lot from each session and we are recording all the comments, just like during the law reform phase.

There are lots of ideas and this diversity is the strength of our approach. If Representation Agreements are going to be used, they must be **flexible** - to meet many different needs - and, they must be **understandable** - to a variety of users.

We also need to reflect on the findings, the principles and the purpose of

continued on page 10

continued from page 9

Representation Agreements. We will organize some "talking circles" with people who can help us VISION and CREATE real SUPPORT NETWORKS & ALTERNATIVES TO GUARDIANSHIP using Representation Agreements.

The Community Voice: Why we need it

We believe it is critical to have a COMMUNITY VOICE where we can feed in our findings and feed them back out.

The groups we have met with want to continue to be involved. We want to give them the support and information they need to be able to keep their network informed about and respond to the continuing developments of Representation Agreements. This is community development!

We also recognize that Representation Agreements are only one "piece of the pie". Although they are critical in providing a pre-planning mechanism and thus an alternative to guardianship, other tasks are also vital and are related to what we are doing - support

networks, advocacy, community response networks, capacity and needs review.... We need some ways to link up with what others in the community are doing.

We also look forward to the development of a NEW PARTNERSHIP MODEL with government.

If you would like more information or would like to become involved in the Task Group please contact Joanne Taylor at 688-2565 or Tom Klopp at 420-2896.

A Network of Advocacy

After their meeting at the Planning Forum on the implementation of adult guardianship legislation, a group has been working to develop a framework for individual and community-based advocacy for people who are or may be affected by adult guardianship legislation.

In their discussions, they have outlined a set of key principles to guide the advocacy work that will need to be done if the legislation is to be effective. These principles emphasize that self-advocacy is the best form of advocacy and that one of the most important roles for the community advocate is to strengthen both an adult's own abilities to speak out and the ability of family and friends to provide support.

The group has outlined some of the goals that it would like to achieve. These goals include:

- Helping to develop a province wide advocacy network that will include individual and community advocates, rights advisors and legal advocates.
- Identifying advocacy requirements at local and regional levels.



Gary Colley and Ludo Van Pelt at the launch of the legislation

- Helping to establish an independent advocacy body that will, among other things,
- provide training supports
- educate the government, the public and professionals
- act as a central referral point

- make policy recommendations to government

The group is actively talking about the best ways to promote this work and these principles. They welcome your involvement. Please contact Gregg Schiller at the B.C. Association of Community Living, 875-1119, if you would like more information.

Understanding Capacity: A Proposal for a Pilot Project

At the planning forum in September, Robert Pepper-Smith presented a proposal for a new way to assess needs and capability. Here is a summary of his presentation. Action on this proposal was recommended as a high priority by participants at the community session of the planning forum.

British Columbia's new Guardianship Legislation distinguishes between a review of need and a capability review. These two reviews are a critical element in each component of the legislation. For instance, an assessment of need may be required to redirect requests for formal guardianship to alternatives, e.g. advocacy or personal support. In addition, an assessment of need and capability may be required in the following instances: as follow-up to an initial investigation of abuse or neglect; to advise the court on the type of decision-making appropriate to the individual and her circumstances; when a representation agreement is challenged; or to respond when there is no consensus as to an adult's ability to make a major health care decision.

After a 3 month period of talking to people in the community, professionals, advocates, self-advocates and family members, we have come up with a proposal for a pilot project that will try a new way to assess needs and capability. Here are some of the important elements of the project that we have proposed.

- The Project will develop an assistance and needs review that will promote the use of alternatives to legal guardianship, to ensure that a capability review will only be considered as a last resort. The Project will aim to demonstrate and document the effectiveness of various alternatives to legal guardianship, including the assistance of family, personal support networks and community-based advocacy.
- The Project will also aim to develop standardised procedures for the assessment of capability, when there remains no other way to assist the adult. These procedures will be developed by teams that include community representatives as well as professional care-providers, such as occupational therapists, physicians, nurses or social workers. Establishing a multifaceted team that includes community representatives will help to ensure that standardised procedures for the assessment of particular capabilities will remain sensitive to the adult and her particular needs and abilities within her circumstances.
- The Project will also develop appeals and review procedures, to ensure that adults found incapable have an opportunity to appeal the determination. An easily accessible, impartial appeal procedure is necessary because if an adult is found incapable, he may lose fundamental rights and

freedoms. The gravity of such a loss - plus the acknowledgment that there is no certain method for assessing something as complex as capability - make the opportunity to challenge a finding of incapability a fundamental right.

- Through legal advocacy, the Project will offer to adults who are currently under a guardianship order the opportunity to have the order reviewed. It may be that many adults who are currently under guardianship orders could benefit from alternatives such as a representation agreement or a personal support network. The Project will research the cost of maintaining the bureaucracy associated with guardianship orders, in order to determine whether alternatives such as personal support networks and community-based advocacy are not only more able to maintain the adult's autonomy and self-esteem, but are also more cost-effective.

In order to ensure comprehensiveness, the Project will be established in three sites: a city, a mid-sized community and a rural community. It will be directed to those adults who are most likely to have their capability questioned: those with physical disabilities, those who have been diagnosed as having a mental disability or illness and those who have been affected by strokes or degenerative diseases such as Alzheimers or Parkinsons disease.

The Project to Review
Adult Guardianship
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and with the sponsorship of



British Columbia Association
for Community Living

**COMMUNITY LEGAL
ASSISTANCE SOCIETY**

*For the last four years
our project has been housed at:*

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Forging a Community Coalition for Implementation

A transition group made up of representatives of several organizations that are affected by adult guardianship legislation has been meeting to examine ways of maintaining an independent community voice during the implementation period.

Acting on the recommendation of the community planning forum members of the group are working on three action plans:

1. Funding a community coordinating office for the implementation period.
2. Making recommendations for the structure and membership of a community coalition.
3. Proposing a community-government partnership framework that is based on the principles that were outlined at the planning forum.

The Transition group has been reporting regularly to the Reference Group (a Strategies and Issues Committee) of the Project to Review Adult Guardianship.

Final reports on each of the three areas will be presented to the community on December 13, 1993 at a special Guardianship Committee meeting. Look for more news about the community coalition in the weeks ahead!

The transition group includes representatives from:

*B.C. Coalition of Persons with
Disabilities*

*B.C. Association of Community Living
Community Legal Assistance Society
Seniors Resources and Research Society*

The Alzheimers Society

*Planned Lifetime Advocacy
Network (PLAN)*