

Newsletter

SPRING 1993

“How Can We Help” Moves to Legislation

During the last few months, The Project to Review Adult Guardianship has focused on developing the legislative and policy framework for guardianship reform.

After the publication of “How Can We Help?” in September, 1992 the Attorney General made a commitment to introduce legislation based on this report in the Spring Session of 1993. The Joint Working Committee undertook to oversee the legislative drafting process and to mobilize several community/ government policy groups to amplify the areas of “How Can We Help?” that could not be legislated.

Dr. Rob Gordon, a member of the Guardianship Committee, was employed as one of the drafters and he has been reporting to the Guardianship Committee and the Reference Group on a regular basis since January. This kind of communication between a legislative drafter and the groups that have a vested interest in the outcome is unprecedented in the history of law reform in British Columbia.

Six joint policy groups have been meeting in the last three months to discuss Advocacy, Personal Supports, Abuse and Neglect, Capacity and Needs Reviews, the Office of the Public Guardian and Trustee, and Health Care and Facilities Placement Consent. This task has been an arduous one, with each group meeting a least one half day/week and members spending countless additional hours in research and

See “How We Can Help” on page 2



Chris Walker is a member of the group of consumers and self-advocates who, with the help of Secretary of State funding, have embarked on a project to interview people about their experiences with guardianship.

Chris and his fellow reporters hope to produce a booklet of stories that will help everyone to understand more about what people with disabilities think and feel when they make decisions by themselves or when other people make these decisions for them.

Watch for the results of their work in the fall of 1993.

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writing. Their contribution has been invaluable. Each group has prepared its final report and these reports can be borrowed from the Project office or the Office of the Public Trustee.

Guardianship and Reference groups meetings in the last few months have been dedicated to conveying information on drafting and policy making to as wide an audience as possible and to managing some of the strategic issues that have arisen. One issue that surfaced early in 1993 was the representativeness of the Joint Working Committee. After serious discussion about the need to broaden the base of membership on the Joint Working Committee, it was decided to recommend an expansion of the community side to include one representative from each of the policy groups. This recommendation was accepted by the government side and four new members were added in February, 1993. This larger Joint Working Committee has improved the communications and the accountability of this group to the Guardianship Committee.

The transition from three full-time staff members to two part time staff has meant that everyone has had to work as efficiently as possible in order to meet our objectives. The leadership of volunteers, which has always been a hall mark of the guardianship reform process, has continued to be essential for the successful management of this transition year.

With the legislative phase now coming to its peak, attention is shifting to the planning for the implementation period. Members of the Guardianship Committee are intensely aware that in a period of fiscal restraint, implementation of the whole legislative package is not assured. Recently, it has been proposed that a steering committee

made up of government and community representatives, determine the priorities for the implementation budget.

The Guardianship Committee will advocate strongly for community based planning for a phased-in implementation that will enable pilot testing of all of the components of reform in several regions of the province.

Welcome to New Staff



Christine Gordon and Kim Graham

Christine Gordon and Kim Graham joined the Project to Review Adult Guardianship in the new year.

Christine who has assumed the role of Co-ordinator has had a long involvement in community development beginning initially in work with citizens groups on issues of poverty and fair employment and more recently in health promotion and international development.

She is a Board member of the Social Planning and Research Council of B.C. and the Oxfam Global Health Project and a founding member of the B.C. Healthy Communities Network Steering Committee.

I hope that many of the individuals and groups that have been part of the law reform process will apply their considerable skill and energy towards seeing the ideas of "How Can We Help?" translated into action in their own communities.

Steve Kline, Chairperson of the Guardianship Committee

Kim is the Project's administrative assistant. Her background in communications will be put to good use in helping to get the message of "How Can We Help?" out to the many groups and individuals who will be affected by the impending legislation.

In her spare time, Kim is a competitive paddler and a fearless bicycle rider.

Both Kim and Christine, who are employed part-time, are ably assisted by Marian Greif who has volunteered at the Project since January, 1992. Marian has assumed many roles and her talent for keeping the administrative affairs of the Project on track just keeps growing.

An Introduction to the Legislation

When "How Can We Help?" finally appears as Legislation it will take the form of four separate Bills. These Bills are currently titled: The Health Care [Consent] and Care Facility [Admission] Act; The Representation Agreement Act; The Adult Guardianship Act; and The Public Guardian and Trustee Act.

The Health Care [Consent] and Care Facility [Admission] Act will cover all of the steps that must occur in order to ensure that major and minor health care and placement in a licensed facility occur only after an adult or a substitute decision-maker has been given full information and consent has been received. The Act will outline the duties of health care providers and it will recognize the role of family and friends in assisting people to

make decisions about their health and personal care. (See Chapter 5 and Appendix D of "How Can We Help?" for more information on the framework for this Act).

The Representation Agreement Act will specify what a representation agreement is; who can make one; what kinds of decisions a representative can make or assist an individual to make; the safeguards that will have to be in place and the duties and responsibilities of professionals, the Public Guardian and Trustee, and the Central Registry in processing and upholding these agreements. (See Chapter 3 in "How Can We Help?" for more information).

The Adult Guardianship Act will have several parts that will include a mandate for a community response to abuse, neglect and self-

neglect and a description of various procedures that will have to be followed to obtain associate or substitute decision-making powers on behalf of an individual. Provision for assistance and needs review and an incapacity assessment will form an integral part of this Act. (See Chapter 4,6 and 7 of "How Can We Help?" for more information).

The Public Guardian and Trustee Act will update the existing Public Trustee Act to enable the Office to assume the new duties that are outlined in all of the Bills; ensure the establishment of an Advisory Committee to the OPGT; and mandate an evaluation of the system after three years. (See Chapter 8 of "How Can We Help?" for more information).

Rob Gordon: Teaming Up for Reform

For Rob Gordon being a member of the team that is drafting the four bills that will make up the guardianship reform package has been a very rich experience. Over the last five months he and his fellow drafters, Claire Reilly and Gerrit Clements have developed a strong bond as they have worked on one of the largest and most complex pieces of legislation to be brought before the Provincial Assembly in recent years.

Rob's background makes him eminently suitable for such a formidable task. During the 1970's, when he was an administrator of a community law office in Melbourne, Australia he worked to create mental health law programs for people who had been institutionalized. His interest in the situation of people who were

vulnerable spurred him to come to Canada in 1979 and, with the aid of a Commonwealth Scholarship, he pursued masters and doctorate work in the area of mental health and guardianship law. His 1984 study "Standing in their Shoes" investigated guardianship law, particularly as it related to the elderly, and identified elder abuse as a serious issue. This report had a strong impact on several provinces and Rob was asked to help draft new mental health and guardianship legislation in the Yukon and to consult with the government of Newfoundland and PEI on reform of their mental health acts. His recent book "Adult Guardianship Law in Canada," written with Simon Verdun Jones, has established Rob as one of the leading authorities on the evolution

and current practice of guardianship law.

While Rob spends his working days as a professor of criminology at Simon Fraser University, he spends much of his spare time in various community pursuits including membership on the Board of Directors of the Community Legal Assistance Society and the Mental Health Act Review Consultation Committee. He has been a long-standing member of the Guardianship Committee and a member of the Joint Working Committee that wrote the "How Can We Help?" report.

The process of drafting all of the components of the guardianship package has been a collaborative one. With each Bill the drafters

See "Rob Gordon" on page 12

How a Bill Becomes Law

As the four Bills on guardianship reform come closer to their introduction into the house many people have been wondering how the legislative process works.

We contacted the Clerk of the Legislative Assembly to obtain more information. He offered this map of the stages that a bill must pass through before it becomes Law.

STAGE	ACTION IN THE HOUSE	PUBLIC INVOLVEMENT
1. Introduction and First Reading	The bill is introduced and read a first time. No debate is allowed and although a vote takes place it would be most unusual for the first reading motion to be defeated.	The public hears about the bills through the media or information kits that are distributed by government. The responses of groups or individuals can be given to M.L.A.'s; to the relevant Ministries; or to the Guardianship Coalition's Legislative Response Committee (See "How to Become Involved During First Reading" on this page).
2. Second Reading	When the bill is read a second time, the principle of the bill is debated and if the principle is approved the bill proceeds to a committee for a detailed consideration.	
3. Committee Stage	At the Committee Stage, the bill is considered section by section and debate is focused on the actual wording of the bill. At this stage, amendments may be moved which would have the effect of altering the text.	
4. Third Reading	When the bill is read a third time, a vote is taken but it is usually a formality and bills are rarely debated at the Third Reading stage. After the bill has passed Third Reading it is an act of the Legislative Assembly and awaits Royal Assent.	
5. Royal Assent	Our Constitution requires that before an act becomes law, it receive Royal Assent which is given by the Lieutenant Governor	The time between Royal Assent and proclamation is the Implementation Period. The Guardianship Committee would like to involve as many people as possible in this phase of testing some of the community-based services, that will have to be developed in order to make the legislation effective.
6. Proclamation	After Royal Assent, the Act, which becomes the Law of the Province may not come into effect until a date determined by the Lieutenant Governor in Council. It will not come into effect until determined appropriate by Cabinet.	

How to Become Involved During First Reading

① Contact the Legislative Response Committee of the Guardianship Coalition. This Committee has been established to review the legislation and to consider comments, suggestions or recommendations from any groups or individuals in the Province.

The Committee will submit a report on its work to the Attorney General before First Reading is completed.

The Guardianship Committee will follow up on this report and ensure that there is a response from Government to its recommendations.

② You can let your MLA know what you think about the legislation. It will be a good opportunity to educate your MLA about what the reform of guardianship might mean to you or the group you represent.

Take the time as well to question your MLA about what commitments will need to be made in order to ensure that all the Acts are proclaimed.

③ Use the contacts that you have in your community to let others know about the legislation. Most people will have some stake in the legislation, whether they are aware if it or not, because each of us may become vulnerable at any time.

④ Contact your local newspaper with a letter or a telephone call. There will be lots of information available, through the Guardianship Committee or the Attorney General, to enable the media to produce good human interest stories on the new legislation.

POLICY GROUP ROUND-UP

Personal Support Policy Group

The Personal Support Policy Group has been working to develop recommendations about how support from family and friends can be recognized and how support networks can be created for people who do not have a spontaneous circle of supporters in their lives.

The Group defined a personal support relationship as one between an individual and someone close to her personal life. It is a committed, voluntary and consistent relationship that is acknowledged by everyone who is involved.

Members of a support network help an individual to make decisions and to communicate plans and wishes and sometimes they advocate for services or information. They are a consistent source of friendship and emotional support.

The Policy Group believes that this kind of informal helping is so important that it has recommended that all government ministries, and agencies that contract with government should be required to develop policy statements that recognize the importance of personal support networks in the planning and delivery of services.

The Group is also attempting to work out some guidelines for facilitated personal networks which are circles of support that are purposely created for people who are alone. "How Can We Help?" underlined the importance of making this kind of support available to people as a way of preventing the need for formal guardianship.

Eric Laity

Advocacy

The new legislation talks about our rights as adults to live independently and to make our own decisions about things important to us. All of us need help and information at times to do this.

Advocacy ensures that people understand their rights and that their voice is heard. Advocacy helps people communicate and solve problems.

In many cases, adults will turn to family, friends and personal support networks for assistance. But sometimes there is no one in the adult's life who can help. At other times the family, friends and net-

works themselves need information and support from advocates who are trained and knowledgeable. This is particularly true when an adult is trying to get benefits or services when there are legal issues.

There are already many advocacy groups in the province. These advocates will be asked to provide services to adults, their families and friends. In some places new advocacy services will need to be developed to make sure that people's rights are protected.

Advocacy is an important and necessary part of the new legislation.

Pearl McKenzie



*Members of the Advocacy Policy Group:
(Top row, l to r) Jack Collins, Sid Sawyer, Brian Salisbury.
(Bottom row, l to r) Ann White, Peggy Chan, Bill Trott, Christine Cunningham.
(Not in photograph) Patsy George, Carol McEown, Pearl McKenzie.*

POLICY GROUP ROUND-UP

Abuse, Neglect and Self-Neglect

The Abuse, Neglect and Self-Neglect Policy Group's purpose was to develop standards and guidelines that would enable communities in B.C. to respond quickly and effectively to reports of abuse or neglect. The cooperative community undertaking that such response would require was described in the "How Can We Help?" paper as a Community Response Network (CRN). Each community's CRN would include existing local health, justice and social service agencies (both government and non-government) which could work together to coordinate their activities in response to abuse and neglect.

Central to the Policy Group's discussion was an awareness of the delicate balance that needs to be maintained between an adult's right to self determination and society's responsibility to protect those who are unable to protect themselves -- a balance that is especially important when abuse or neglect is encountered.

The Policy Group's task was to develop a framework for local CRN's and their operation. Beginning with a careful consideration of how the principles stated in "How Can We Help?" would apply specifically to a community's response to reports of abuse, neglect, and self-neglect, the Group moved to such questions as: How should a CRN be structured? Who or which agencies should be involved? How should both emergency and non-emergency reports of abuse or neglect be responded to? What needs to be done in training and education so that cases of abuse and neglect are dealt with effectively but in the least restrictive, least intrusive and least stigmatizing manner possible for the abused adult? How are confidentiality and

accountability to be addressed? How can a CRN ensure that each report of abuse is promptly followed up and adequately monitored?

Understandably, not all these questions were fully answered in the time available and some areas

of uncertainty were identified for further input and study. Nevertheless the Policy Group was able to complete a 30-page report including recommendations which, it is hoped, will influence the next phase of CRN policy development and implementation.

Honor Hill

Health Care Consent Policy Group

The Health Care Consent policy group grappled with the issues of how to ensure fair and reasonable procedures for obtaining informed consent to major health care and consent for admission to a care facility.

In all of its considerations the group attempted to find the balance between the realities of hospital or facility life and the rights of individuals and members of their support networks to obtain the best possible information about health or personal care procedures.

One of the group's major recommendations is to include at least one other person (a family member or friend, for example) in any review undertaken by a health care provider of the capacity of an individual to give informed consent to major health care. This recommendation recognizes the valuable role that family and friends play in giving support to an individual and in assisting with communication. The policy group reaffirmed that communication with the adult is of primary importance and that a care provider must make every effort possible to obtain the consent of the adult before requesting assisted or substitute decision-making. A refusal to accept treatment should not in and of itself lead to a questioning of capacity.

The group also looked at the procedures for obtaining consent to

admission to a care facility which were outlined in Appendix D of "How Can We Help". They recommended that the legislation clearly describe the kind of information that facilities must provide to all adults prior to asking for their consent to admission. This information should include: a description of the kind of care that a facility routinely provides and the rules or regulations that are particular to the facility (a non-smoking environment, for example); a plan for the personal care that will be provided to the resident (activity programming, routine nursing care, activities of daily living) and a provision that clarifies that before any non-emergency restraint measures can be used, the specific approval of a temporary substitute decision-maker, substitute decision-maker or court appointed decision-maker will have to be obtained.

The policy group recognized that much work remains to be done in categorizing the kind of facilities that will be governed by the legislation and in clearly defining the differences between health care and personal care. However, their recommendations will be a solid basis for further consultation during the implementation period with all of the groups and individuals who could be affected by the Health Care (Consent) and Care Facility (Admission) Act.

Kathy Hamilton

POLICY GROUP ROUND-UP

The Office of the Public Guardian and Trustee (OPGT) Policy Group

The OPGT Policy Group was charged with the task of clarifying the structure, function, accountability and financing of the Office of the Public Guardian and Trustee in light of all of the responsibilities that are assigned to the Office with the new guardianship legislation. The group identified some important issues to be put into legislation and others to be developed in policy.

The Group first confirmed that the Public Guardian and Trustee (PGT) Act should require the PGT to be exemplary in its fiduciary duties and to adopt and put into effect the principles expressed in the legislation regarding its activities. It was agreed that each piece of legislation should clearly set out those principles (in effect the principles outlined in "How Can We Help?") which will guide all individuals and organizations when they carry out their duties.

In considering the relationship of the OPGT with government, the group studied a number of models ranging from a crown corporation to a society. It settled on a recommendation that the OPGT become an independent agency responsible to the Attorney General and that the Public Trustee be appointed for a fixed term. The group believes that this independence would allow the Office to act on behalf of an individual or estate without risk of conflict, yet still be administratively accountable to government. It was also recommended that an Advisory Board be established to provide advice to the Public Trustee; to review the whole range of OPGT activities; and to report both to the Public Trustee and the Attorney General.



Eric Laity



Kathleen Cunningham

Two community members of the OPGT Policy Group

It was recommended that the OPGT set up four operating units: personal representation; officer of the court; system co-ordination; and support and assistance. This structure would minimize conflict of interest between the units and optimize the ability to respond to any changes that an evaluation of the system might recommend. It was emphasized that the OPGT should assume an "arms length" role in co-ordinating services related to community response networks, capacity and needs review teams and consent to health care.

The group emphasized that public accountability is crucial to the effective operation of an independent agency. An internal complaint resolution process was developed. Options for further complaint were identified and include the Court and the Ombudsman. Other components that were recommended as essential to internal accountability include an ethics

committee, and investment advisory committee and an internal audit committee.

The policy group recommended that evaluation of all of the units of the OPGT begin at the start of the implementation period with the selection of an independent evaluator to establish an evaluation framework. Internal evaluation reports, issued at 12 months and 24 months of operation, should guide the system and a final evaluation should be given to the Attorney General at the end of 3 years.

Financing of the OPGT will come from fees for service wherever possible, as well as government funding. However it was decided that before recommendations could be made, much broader community consultation was needed about the implications of imposing fees on some personal representation services.

Kathleen Cunningham

Understanding Capacity

Over the last few months, the Working Group on Capacity and the Joint Policy group on Capacity and Needs Review have been wrestling with a number of ideas that are pushing against the margins of our traditional notions of what capability or capacity is and what it means to our conceptions of ourselves.

The "How Can We Help?" report that was published in 1992 presented capacity in a relatively traditional way citing it in various chapters as "understanding the nature and consequences of decisions" or "understanding the information that is being given". Only in the chapter on Representation Agreements is this cognitive view of capacity expanded through a recommendation to weigh other factors in determining whether an individual is capable of entering into a Representation Agreement. These factors were described as the ability to demonstrate choices and preferences; the existence of mutual trust, caring, commitment and acceptance in a relationship between an adult and a designated representative; and the communication of a desire to have a representative.

The members of the Working Group recognized that this characterization of capacity was not reaching far enough into their own experiences; nor was it reflecting the work that they and others were doing to raise public consciousness of the abilities or gifts that many people who had been labelled as incapable were able to reveal when they were welcomed into a circle of support and assistance. In an effort to catalyse their own thinking they asked two researchers, Robert Pepper-Smith and Deborah Rutman, to explore new insights and knowledge about capacity and to recommend ways in which these ideas could be incorporated into the

process for assessing capacity. Their paper has been stimulating the Guardianship Committee to renew its discussions about the definition of capacity and this in turn has challenged everyone involved in Guardianship reform to consider how legislation and policy can reflect a rapidly changing awareness of what it means to be capable.

In an effort to widen this discussion to a larger community, here is a brief synopsis of the position paper on Assistance and Needs Review and Capacity Reviews that was presented in February 1993 to the Policy and Working Groups.

The Definition of Capacity

Capacity is best understood as the range of abilities that people employ every day in order to lead their lives. These abilities include skills of intuition and feeling; a sense of one's own preferences and values; the ability to act on one's intentions; a sense of one's own beliefs. The proper context for evaluating these skills is the culture and life history of the individual. The measurement of cognitive performance, for example, does not in itself provide a proper standard for the evaluation of capacity.

The practical exercise of these abilities is highly dependent upon the availability of enough support and assistance from caring people who help us to make sense out of the information that we have at hand or to arrange our environment so that we can act. The exercise of capability is as much related to communal resources as it is to any innate endowment. Feeling capable contributes to our sense of self-esteem, whatever our starting point.

Assistance and Needs Review

If the ability to lead our own life (our capacity) is vital to our

self-respect and our citizenship, and is filtered through our relationships with others and our access to assistance when we need it, then it follows that any assessment of our capacity should begin not with a narrow yes or no determination of rationality but with a broader survey of the landscape for self-determination.

The position paper advocates that an Assistance and Needs Review be the starting point. The purpose of this review is to enable an individual, whose ability to live her own life has been called into question, to be connected with all of the available support and assistance that would enhance her own capacity to continue to be self-determining. It narrows the question to only those particular abilities that are wavering, personal care, or financial management, for example and it considers that deeply rooted social or economic inequalities often masquerade as incapacity. A mandated Assistance and Needs Review which focused on the goal of enabling an individual to act independently and interdependently would mean that in many instances, capacity would not be called into question. Instead it would re-emerge or become enhanced in a well-nurtured environment.

The Capacity Review

If an Assistance and Needs Review fails to uncover ways in which latent abilities can be nurtured, and if it is thought that an assessment of capacity would benefit an individual then a Capacity Review might be undertaken as a last resort. It is a last resort because it is "intrusive, public, potentially adversarial and potentially devastating to rights and freedoms". The potential for harm

See "Capacity" on page 11

The Native Perspective on Adult Guardianship: A Progress Report

In July 1992, a supplementary paper entitled "A Native Perspective on Adult Guardianship" was released by the Project to Review Adult Guardianship. It contained 14 recommendations that arose from public forums that were sponsored by native people to examine their unique position in relation to adult guardianship law. Both the federal and the provincial government have a role to play if a native adult needs substitute decision-making and which government will have jurisdiction depends upon whether a native person is living on or off a reserve.

All of the recommendations contained in the supplementary paper sought to ease the complexity of this system by empowering native organizations to assume control over guardianship, to ensure fairness of treatment for all Indian people whether on or off reserve, and to enable native people to design and deliver the support services that they need to care for each other.

Recently, the Native Guardianship Committee met to consider how these recommendations were going to be incorporated into the legislation and policy that is currently being drafted. Members of the Committee decided to pursue two key recommendations.

The first recommendation is to include in the legislative package a section that would allow the delegation of the Public Trustee's authority to aboriginal organizations that are incorporated for this purpose. The model that is envisioned for this practice is a tri-party agreement in which an aboriginal organization agrees to take the Public Trustee function from the Province and the federal government agrees to use its authority under 5.4(2) of the Indian Act to exempt the group, band or

tribal council from the application of the Indian Act and to provide funds to allow this new function to be administered.

The Committee urged that this devolution section not be proclaimed until development work had been done with aboriginal organizations to enable them to assume these responsibilities.

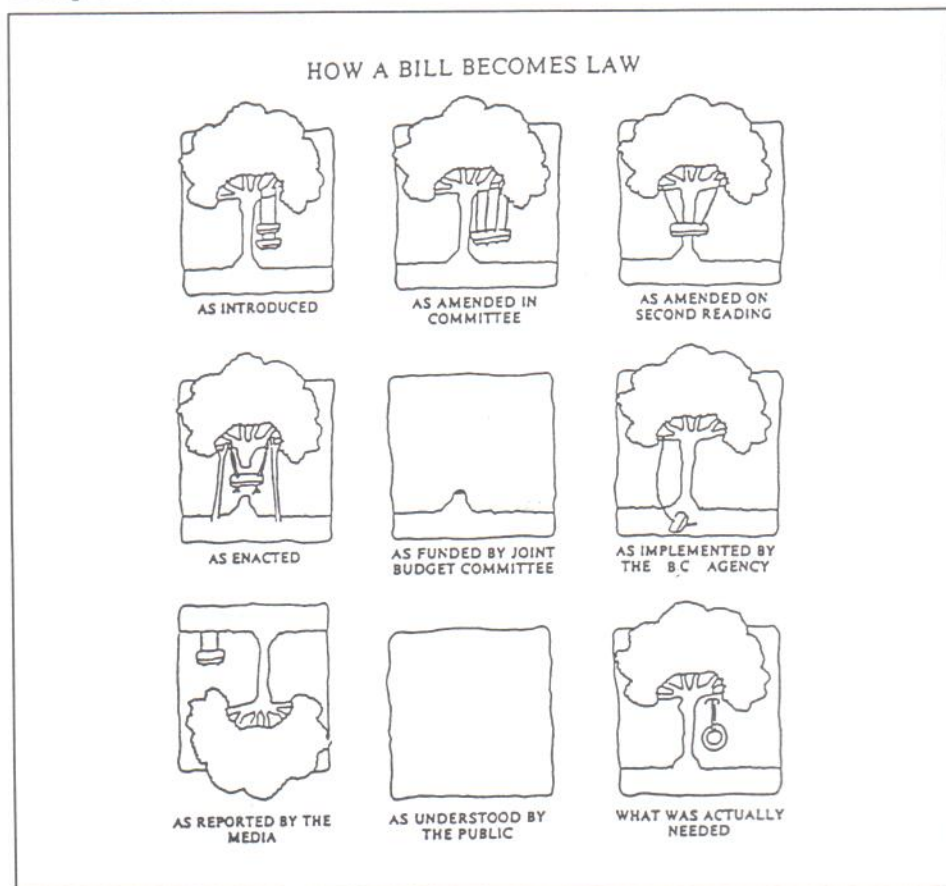
The second recommendation to establish a Native People's Advisory Board to the OPGT, is seen by the Committee to be a step in promoting this kind of community development in native communities while ensuring that the distinct position of native people is given strong voice in the current system.

These two recommendations were presented to the Joint Working Committee and to the Policy Group on the Office of the Public

Guardian and Trustee. After a long series of discussions, it was agreed that the implementation of these two recommendations should be preceded by a ten or 12 month period of communication, education and community development with native people across the province in an effort to find a broad base of support for bringing these recommendations forward as amendments to the legislation in the Spring Session of 1994.

A plan has been developed for this work and it will be presented to the implementation committee for funding and support as soon as the legislation has been passed in the House.

If you would like a copy of the Supplementary Paper: A Native Perspective, please contact the Project office.



Policy Making: Learning the Art of Strategic Compromise

An Interview with Deborah Cooke and Brian Salisbury

One of the major priorities of the Guardianship Committee over the last few months has been to ensure that there are sound policies to accompany the legislation. The Joint Working Committee decided in November, 1992 that the best way to develop policy frameworks for several key areas was to establish groups made up equally of government and community representatives. These groups were asked to provide recommendations by early April, 1993.

The pace of the work for policy groups has been relentless, with most meeting at least a half day/week and spending countless hours in extra research or writing in between meetings. Now that their reports are on the verge of completion, two policy group community members took the time to reflect on their experience.

Deborah Cook has been a member of the Abuse/Neglect Group and Brian Salisbury has been a part of the Advocacy Policy Group. During a recent conversation, they shared some thoughts about the process of policy-making.

Both Deborah and Brian quickly agreed that the consensus building approach of the policy groups had been a challenge.

At the outset, Brian said, people found it difficult to dispense with their organizational hats and get down to the interests of the individuals who are going to be affected by the legislation. It was necessary to go over and over the same issues until enough trust had been built within the group that people could put away their own

agendas. In Deborah's terms, building trust allows you to reach a point of being able to disagree without feeling labelled. Both Deborah and Brian felt that the time constraints on their groups put great pressure on the evolution of trust. By the time we became a cohesive group, Brian said, there was not much time left to work on all of the issues that we had to resolve. Time was also a factor, Deborah explained, in determining the nature of the consensus that was achieved. Sometimes it meant letting things go that deserved more discussion and debate because there was no time to object.

Both Deborah and Brian came to their respective policy groups with strong opinions and positions based on their years of community work and found that they had to develop what Brian called, "the art of strategic compromise." Deborah discovered that she had to be much more flexible than she imagined but that being flexible was an outgrowth of the opportunity that the policy group, and indeed the whole guardianship project, has given her to learn more about the experiences and needs of other people. "Everyone made compromises," Brian said, "but don't interpret that as an overall weakening. There are still differences of opinion but we are generally happy with what we are proposing."

What helped the process of building trust and eventually consensus, both agreed, was effective use of the skills of group members themselves. If issues are important, they cannot be pushed under the rug. There must be frank and open discussion and each group member has to take responsibility for helping this to happen. The Chairperson can play an important role in enabling group members to act on their capacities.

What helped the process of building trust and eventually consensus was effective use of the skills of group members themselves.

Both Deborah and Brian were happily surprised by the degree of affinity that they had with government representatives. Brian attributes this to the ability that government representatives had to stay open-minded. Deborah believes that government representatives were moved by the level of commitment that community members had "to do whatever it takes to bring about social change."

In thinking about what might have improved the process, Deborah identified accountability to the larger community as a major issue. "We went from an open, large group process to small, closed, tightly focused groups. It would have helped if the working groups had continued to meet and the policy groups had reported back to them."

Not having the language of the legislation in front of them also forced policy groups to work in the shadows some of the time. "Actual wording of definitions is important. Deborah said, "Without a solid understanding of the legislation we were always at risk of just rehashing How Can We Help instead of getting down to writing the policy that would change the legislation." The policy making process was a balancing act, Brian said, using How Can We Help to guide our ideas and then comparing these with the experiences of all the groups that we could represent in some way from the community.

Overall, Deborah and Brian agreed, it has been a worthwhile process and they might even volunteer to do it again some day.

Government representatives were moved by the level of commitment that community members had "to do whatever it takes to bring about social change."

What Next? A Look at Implementation

Once the bills that mandate the reform of the guardianship process have been passed by the legislature, the period of implementation begins. During implementation the policy and procedures that will guide practice and the new approaches to providing help to individuals who may need assistance with decision-making must be developed before the legislation is put into effect or proclaimed. The importance of a well-planned implementation period is underlined by the fact that some bills that have been passed by the Legislature have never been proclaimed because implementation was not successfully completed.

The Guardianship Committee has begun to plan for community involvement in the implementation period and a number of principles have been guiding these planning discussions.

- The proposals for community response networks, facilitated personal support, advocacy, representation agreements and a needs-based conception of capacity should be pilot tested during the implementation period.
- Pilot testing should be community based with the people who are most affected taking the lead whenever possible.
- The emphasis should be on building support for alternatives to guardianship so that the Office of the Public Guardian and Trustee becomes a last resort for substitute decision-making.
- There should be adequate

funding to ensure that a strong base of community resources is in place before the legislation is proclaimed.

Here are some examples of the ideas that are arising from these principles.

- Seniors' groups might want to try out representation agreements within their own networks.
- Consumers of mental health services may want to experiment with various forms of Ulysses Agreements.
- Community response networks could be initiated by several communities who are interested and testing of community advocacy, personal support networks, and assessment and needs reviews could be incorporated under the umbrella of the network.
- Participatory action research might be used to learn more about how to assess capacity within the context of individuals' lives.

These ideas signal the potential for the implementation period to become a creative and exciting opportunity for community members to use their skills and experience to develop a support system for independent and interdependent decision-making. However, it will need both political will and strong community involvement to make it happen. The Guardianship Committee can help facilitate some of this work but most of the responsibility will belong to the individuals and organizations that are committed to change.

Please contact the Project to let us know how you can be involved in making implementation a success.

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in a Capacity Review needs to be balanced by a number of procedural safeguards and the development of careful, highly refined measurement tools that will ensure fairness.

A Capacity Review should proceed only with the consent of an individual, and there should be efficient and independent Appeal and Review mechanisms. The assessors should also be independent of the Office of the Public Guardian and Trustee (because of the office's potential conflict of interest with its guardianship role) and they should be drawn from a number of disciplines to work as a team. Members of the community who have had experience with particular problems at issue should be part of an assessment team. Individuals should be seen in the settings and at the times where they can be "at their best" and the assessments should consider only the particular ability that has been called into question.

The position paper emphasizes that new assessment tools need to be developed that will not be dependent upon communicative abilities or traditional cognitive tests. If research and testing of new instruments is not undertaken as a priority, then a Capacity Review will likely fall back onto traditional medical diagnoses, or psychiatric evaluations.

As the position paper argues, the assessment of capacity is the linchpin of virtually every legislative and policy domain related to guardianship. Concern about how capacity is viewed has also been the meeting ground for every group that has been part of the Guardianship Committee. Understanding capacity and reflecting that understanding in law and policy will be crucial to the achievement of the principles and the spirit of guardianship reform.

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Rob Gordon...
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have followed a step by step procedure beginning with the conversion of the relevant content of "How Can We Help?" into statutory language. This would be followed by long and complex discussions among team members about all of the legal implications of each section. Any vague or controversial areas that were identified by these discussions were taken to the Joint Working Committee, to policy groups, or occasionally to other consultants who provided advice to the team.

Throughout this process, Rob has reported back to the Guardianship Committee on the team's progress and Gerrit Clements has played a similar reporting role with the Interministerial Committee on Dependant Adults. The effect of all of these consultations has, in Rob's words, "improved the product" by resolving questions more quickly and ensuring that the legislation is anchored by the principles of "How Can We Help?" It has been a unique experience to include so many of the groups and individuals who will be affected by the legislation in the actual writing of the law.

While the drafters are now rushing to the deadline of introducing the guardianship package during the Spring Session of the Legislative Assembly, their work will not end there. Regulations will have to be produced before the Acts are proclaimed and there are likely to be some amendments to craft before the drafting team is completed.

Rob Gordon is eager to see the job completed. He looks forward to the day when he can leave the word processor and help to put some of the statutes that he has written into effect.

A Last Word...

In working through this legislative phase of guardianship reform members of the Guardianship Committee have found themselves referring frequently to the principles that were established in "How Can We Help?"

In brief these principles recognize that:

- All adults have the right to autonomy and self determination;
- All adults are entitled to receive the most effective but least intrusive form of assistance and support;
- All adults are entitled to the legal presumption that they are capable of making decisions;
- Court appointed substitute decision makers and guardians should be offered only as a last resort after all other support and assistance alternatives have been exhausted;
- All processes and procedures associated with support, assistance or protection should be accessible to all adults.

These principles have been the anchor for the work of the last few months and whenever law or policy making has appeared to veer off course someone has always been around to remind people of these principles. There will be no better criteria for evaluation of how effective reform has been than to see how it measures up to these ideals.