

ENDURING POWERS OF ATTORNEY

TO CONTINUE ON

As outlined through previous editions of “KRAMER’S LEGAL BRIEF’S”, there has been significant debate over the past two years as to the merit of eliminating the more common estate planning tool of the Enduring Power of Attorney (“EPA”) with that of the often more complicated and lesser known Representation Agreement (“RA”).

EPA’s, you will recall, are legal tools that allow an adult to appoint another person to manage their financial, legal and property affairs in the event of future mental incapacity. The enduring provision of these document’s enabled the donor of such authority to ensure that their chosen Attorney(s) could continue to fulfill their duties prior to and immediately after a determination being made that the donor was incapable.

RA’s were intended to combine the ability to manage an adults financial, legal, property and health care through one document utilizing Representative’s and Monitor’s. Unfortunately, the RA was not afforded much support from both the legal profession nor the financial community given their complex execution requirements as well as the uncertainty that was created through the development of such legal relationships. The result was a general refusal of many legal practitioners to draft or recommend RA’s to their clients for purposes of managing their respective financial, property and legal affairs. Rather, the practice had become one of developing EPA’s while they continued to exist for financial, property and legal decisions while reserving the RA for health care directives.

It was initially intended that our provincial government would eliminate the EPA and replace it with the full-blown RA’s beginning on September 5, 2002. However, after much lobbying by the legal and financial community along with the election of a majority Liberal government, it was decided by BC Provincial Attorney General, Geoff Plant, that the proposed changes to how we manage incapacity required further debate, research and consultation.

Albert McClean, professor emeritus of law at the University of British Columbia, was appointed by the government in July of last year to assess the effectiveness of these legal planning tools in relation to financial, legal and property management.

On March 12, 2002, Professor McClean’s key recommendations were published. It was Professor McClean’s conclusion that EPA’s should continue to be the main tool for advance planning in financial, legal and property matters. However, it

was recommended that RA's continue to be retained for personal and health-care decisions. Finally, it was concluded by Professor McClean that RA's continue to be authorized under Section 7 of the *Representation Agreement Act* for limited financial, personal and health-care matters.

In addition to McClean's key recommendation, 39 other recommendations aim to strengthen EPA's and simplify RA's. The government has accepted McClean's key recommendation and will consult with the public on the detailed recommendations. The public has been invited to make submissions and comments in writing up until July 12, 2002. For those wanting to take a more detailed review of the report, it is available online at www.ag.gov.bc.ca/public/McClean-Report.pdf, along with e-mail and mail contact addresses for responses.

It is anticipated that following this consultation, the government will prepare amendments to legislation governing RA's and EPA's, with the aim of introducing the changes in the next session. In the interim, both tools will continue to be available in their current forms.

What does this mean for each of you? In a nutshell, EPA's will continue as they have for many years to be the main tool for advance planning in financial, legal and property matters while RA's will continue to be utilized for personal and health-care decisions. It is anticipated that significant legislative changes will be forthcoming over the next year to the current *Power of Attorney Act* so as to prevent the inherent abuses seen with EPA's over the years and which ultimately brought on the need for the RA. I will keep you all updated on such changes through future editions of "KRAMER'S LEGAL BRIEF'S".

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I caution my readers that the information expressed in this article should in no way be construed as legal advice. If you would like further information on this or any other topic please contact me at the address below.

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