

REPRESENTATION AGREEMENTS

AND BILL 6

By

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Significant amendments to the *Representation Agreement Act (RSBC 1996) Chapter 405* (the "Act") have been implemented through the introduction of *Bill 6-The Adult Guardianship Statutes Amendment Act-2001* which was subsequently passed by the British Columbia legislature on March 29, 2001 ("Bill 6"). Bill 6 contains amendments to ten laws related to adult guardianship. Many of the proposed amendments affect the Act and will come into force on September 1, 2001. For an overview of what is a Representation Agreement (the "Agreement"), please see the March, 2001 edition of "**KRAMER'S LEGAL BRIEFS**".

As indicated in the March, 2001 edition, the introduction of the Act initiated much discussion, debate, concern and controversy not only in the legal profession but also amongst the financial and investment industry, government and the community in general. Conclusions were made that the legislation was too complicated and lacking clarity in many areas.

In response to the mounting pressures placed on our government through the introduction of the Act along with the equally justifiable criticisms directed towards the design, practicality and implementation of the Act, a well respected member of the British Columbia bar and former ombudsperson, Ms. Dulcie McCallum, was commissioned during the middle of 2000 by the Public Guardian &

Trustee ("PGT") to conduct a review and make recommendations in regards to potential amendments to the Act. During this same period, many other groups and organizations conducted their own review and analysis of the Act, including the Wills, Estates, and Trusts Subsection of the Canadian Bar Association, the financial industry and various community advocacy groups.

Many of the recommendations put forward by Ms. McCallum as well as the Canadian Bar Association, the financial community and other community advocacy organizations were subsequently implemented into what we know today as Bill 6.

Some of the highlights of Bill 6 include permitting British Columbian's the opportunity to utilize the services of a notary public who has taken a special course to make Section 9 Agreements. Previously, only lawyers were authorized to assist in the making of Section 9 Agreements with general powers.

Additionally, enduring powers of attorney will continue for another year, to September 1, 2002, allowing sufficient time for everybody to become familiar with representation agreements and the improvements contained in Bill 6. Valid enduring powers of attorney made before Sept. 1, 2002 will continue to remain in effect after this time.

The appointment of a monitor is now a mandatory requirement under Section 7 Agreements subject to a number of exclusions prescribed by Section 12 of the Act. Bill 6 has also modified the execution requirements provided in the Act and eliminated the requirements for witnesses to be present when a representative or alternate representative executes a Section 7 or 9 Agreement. Finally, a representative may now also delegate to a qualified investment specialist, including a mutual fund manager, all or part of the representatives authorities with respect to investment matters.

The amendments to the Act through Bill 6 are scheduled to come into effect on September 1, 2001. Additionally, revised regulations to the Act are currently in the drafting stages and should be available shortly.

Although there continues to be genuine concerns with respect to the legislation and its amendments along with a continued reluctance from the legal and financial community to accept and become involved in the process of developing Representation Agreements on behalf their client's, it is apparent that Representation Agreements, in some form or another, will indeed have a place in our community.

These agreement's enable all adult's an opportunity to take control of their lives through carefully chosen representatives during a time when they may not otherwise be able to. The principles of self-determination with assisted or supported decision-making being available as needed lies at the heart of the legislation. These are empowering concepts, especially for those individual's who have been traditionally marginalized.

For more information on Representation Agreements and the amendments, please contact my office at (604) 622-5550.

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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