

# Alternative to guardianship becomes real

## *New law means help from those you trust*

When Drew Dickey signed his Representation Agreement, his mother, Jo, hosted a “signing party” complete with champagne and chocolate cake. With the Representatives and Witnesses present, Drew’s support staff gave him the pen for signing. Drew transferred the pen from his right hand to his left and put his mark on the Agreement. (His support staff did not realize that Drew is left-handed.)

The signing of the Representation Agreement was also a celebration of the community effort to create alternatives to guardianship. For Jo Dickey, involved in the law reform for over 10 years, it is about Drew’s right to have help from those he knows and trusts. “My son can’t talk, but he is still able to make decisions about his life, like signing the Representation Agreement.”

While working on the new law, Drew’s family discovered that the Public Trustee was legal guardian of his finances through a procedure called “Certification of Incapability.”

Living in Woodlands had automatically made Drew a ‘ward’ of the government. When the institution closed, no letter of discharge was issued. With the help of his family and the cooperation of the Public Trustee and the Ministry for Children and Families, Drew was able to locate and have the Certificate of Incapability discharged. Now the long forgotten and once effective Certificate sitting in the files of the Office of the Public Guardian and Trustee, can not con-



**Drew Dickey signs his Representation Agreement.**

flict with the Representation Agreement, which ensures Drew will have assistance to make his own decisions.

Certificates of Incapability are still issued today by authorized health professionals. These result in the Public Trustee automatically taking over the person’s affairs and can also cancel an existing Power of Attorney. This may affect people with a mental illness or dementia (such as Alzheimer Disease) who are admitted to a hospital psychiatric unit or to a mental health facility. Sometimes it also affects those living in the community when assessed through the mental health unit. The good news is that Representation Agreements are an alternative for people who need some assistance – to get it from supporters they trust and who know them. Because a Certificate is difficult to discharge, it is important that people have the option to make Representation Agreements as a first resort!

# A new vision of capability

*The new law reflects both the best thinking and the best practice about capability*

Since the idea of Representation Agreements was first discussed over ten years ago, people have been devoted to examining what it means to be capable of decision-making. They recognized that being capable of making a decision depends upon a number of factors including the kind of decision being made, the nature of the support that is available to the individual who is making the decision and the various ways that people can demonstrate choices and preferences.

A broad community coalition, called the Project to Review Adult Guardianship, which included professionals like the Bar Association and the BC Medical Association as well as community groups like the BC Association for Community Living and the Alzheimer Society, agreed with government that the law should reflect this new vision of capability.

A Representation Agreement begins with the time-honoured common law assumption that everyone is capable. It acknowledges that decision-making of any importance is an interdependent not an independent activity by incorporating supported decision making into the Representation Agreement. It recognizes that the way a person communicates is not a factor in determining capability, and it sets out some broader criteria for assessing incapability if a Rep-

resentation Agreement with standard powers is challenged on the grounds that the maker was incapable.

The practical effect of these provisions is that a person can make a Representation Agreement with standard powers even if they cannot manage their personal affairs or make a traditional contract. It has been said that these provisions lower the “threshold of capability.” What the Act really does is to raise the bar



**A person can make a Representation Agreement with standard powers even if they cannot manage their personal affairs**

for professional, judicial and community practice.

A stereotypical view, a checklist test for capability or a brief conversation will no longer suffice. Instead, all of the ways of knowing will have to be considered if someone is alleged to be incapable. This is in keeping with the fact that a judgement of incapability is usually irrevocable and leads to a loss of civil and human rights.

The Representation Agreement with standard powers is primary prevention against unnecessary loss of these precious rights by compelling all of us to realize that the demonstration of capability is as diverse as the uniqueness of the identity of each individual and of their life situation.