

COMMUNITY LIVING COALITION

RESPONSE TO

***PROPOSAL FOR REFORM OF PERSONAL
PLANNING AND GUARDIANSHIP LEGISLATION***

Respectfully Submitted To the Honorable Geoff Plant,

ATTORNEY GENERAL OF BRITISH COLUMBIA

APRIL 15, 2004

WHO ARE WE ?

The [Community Living Coalition](#) is an open and inclusive gathering of people and organizations dedicated to empowering individuals and families to make decisions about how they lead their lives in the community. To achieve this vision, the coalition is moving forward with the provincial government to develop a new governance structure for community living services for children with special needs and adults with developmental disabilities. Individualized Funding (IF) will be a key mechanism to ensure families and individuals control the funding for their supports.

The Coalition is comprised of individuals, families, self advocates and key family and advocacy organizations and service providers. These include a group of nonprofit service provider associations under the name [Vision for Community Living, Individualized Funding Family Coalition](#) and the [BC Association for Community Living](#) (BCACL).

The Coalition was created and began meeting on a regular basis on November 1st 2001. The Coalition has worked closely with the Ministry of Child and Family Development (MCFD) and actively participated in the Community Living Transition Steering Committee and the Interim Authority for Community Living to:

- address the cutbacks to community living services and supports;
- develop a new governance structure for community living;
- promote Individualized Funding as an option for individuals and families.

OUR CONCERNS

- As a coalition of people concerned with promoting choice, rights and self determination for people with a developmental disability and their families we feel the proposed legislation and amendments run counter to these goals.
- The proposals would appear to be philosophically and materially at odds with the stated aims of the restructuring in Community Living Services. Whereas MCFD has sought to increase the choice and control people with disabilities and their families have over their lives through initiatives such as individualized funding and independent planning, the reforms set out in *PROPOSAL FOR REFORM OF PERSONAL PLANNING AND GUARDIANSHIP LEGISLATION* suggest a return to traditional notions of incapability and the inevitable loss of rights and control.

- The MCFD Community Living restructuring initiative has sought to increase, support and sustain the role of personal networks in the lives of those who may need assistance in decision making without stripping them of their rights. The proposed legislation would remove the more progressive option of assisted decision making contained in S. 8 of the *Representation Agreement Act*, returning to an out dated and oppressive approach to decision making and capability assessment. We endorse the position outlined by Robert Gordon in *The Emergence of Assisted (Supported) Decision-Making in the Canadian Law of Adult Guardianship and Substitute Decision-Making*, (2000) who notes:
 - “The concept of assisted decision-making - sometimes referred to as supported or interdependent (as opposed to independent) decision-making - is gradually appearing in the ...legislation of many Canadian jurisdictions....[it] appears to be acquiring status as a viable alternative to court-ordered guardianship and substitute decision-making.” (pages 62-63 and page 75)
 - Gordon also notes: “One of the points often made in support of assisted decision-making - and it is a compelling point - is that the concept simply recognizes the way in which most adults function in their everyday lives. It is argued that independent decision-making is a myth... Some people require more in the way of support and assistance than others, and with respect to more areas of decision-making than others; it is a matter of degree, rather than a case of absolutes.” (p. 65)
 - Gordon further adds: “The emergence of assisted decision-making marks a significant break from both the common law presumption of (absolute) capacity and the doctrine of free will that are embedded in the theory of independent decision-making: ...It is a product of a new philosophy...that rejects benign paternalism and embraces principles such as the right to autonomy and self-determination, the right to the least restrictive alternative, and the use of stigmatizing court-ordered interventions only as an absolute last resort.” (p. 71)¹

¹ Representation Agreement Resource Centre **Response to Ministry of Attorney General** Issues for Discussion Personal Planning Legislation: Government’s Response to McClean Report. P.4.

- We would further endorse and confirm the position of the Representation Agreement Resource Centre (RARC) who note that:
 - Agreements made under Sections 7 and 8 (supported decision-making) work in practice and serve to decrease the vulnerability of adults by enabling a recognized circle of support.²

- We are particularly concerned with the impact of the removal of S. 8 and modification to S.7 may have on individual's ability to effectively utilize Individualized Funding, a cornerstone of the new approach for community living. To date planning has been predicated on the assumption that S. 7 and S.8 of the *Representation Agreement Act* would continue to apply, or at least would not be modified beyond the proposals of the McClean Review. As such, when an adult did not have a formal guardian or committee, S. 7 and S. 8 would allow a representative to be identified from their networks and they would be able to carry out most required functions under S. 7 without resorting to expensive, time consuming and complex procedures which result in the stripping of effective rights and self determination through a formal declaration of incapacity and the appointment of the committee or guardian.

- As RARC notes: *The Ministry's current proposal to rely on the common law definition of capability for all forms of planning instruments means there will be NO modernization of personal planning legislation in British Columbia. This would be an enormous step backward. It would deny the decade of community consensus building that led to the 1993 passage of the legislation and the 1999 amendments that brought it into effect - and which received the unanimous support of all parties in the legislature.*³

- We recognize that subsequent to the release of the *Proposal* the Ministry of the Attorney General has recognized the importance of assisted decision making and indicated its intention to ensure simple and straightforward mechanisms are in place in the new Act to allow for this practice to continue. We are however concerned that the 'routine management will be more restrictive than that under the Representation Agreement Regulation'⁴

² Ibid p.5.

³ Ibid p.3

⁴ Personal Planning and Assisted decision Making and Adult Guardianship: *Questions and Answers*

- We are further concerned that these restriction noted about will hinder access and opportunity to utilize Individualized Funding effectively, a corner stone of the Community Living Restructuring plan.

- We are not convinced that there is a need for nor a solid rationale a new Act, particularly in light of the recent reforms which had the broad support and participation of many of our members. Once again we concur with the position set out by RARC when they state:
 - The *Representation Agreement Act* modernizes the framework for personal planning and alternatives to guardianship and is more sophisticated than anything else that could be offered or imagined. Its substance and language is significant: a representative's role is to 'represent' the values and beliefs of the individual not to substitute decisions on their behalf.

 - Professor McClean's recommendations for simplifying and streamlining the execution procedures will make the Representation Agreement as straightforward and inexpensive as it is reasonably possible to do.

 - If the government is currently considering one statute, it should be the *Representation Agreement Act*.

 - Introducing a new framework under a new statute - the Personal Planning Act - is unnecessary and will:
 - Turn the clock back on the principles and intent of the reform;

 - Cause confusion and frustration for British Columbians with respect to the making of documents and the status of existing documents;

 - Set back the public awareness and the momentum for personal planning which has been building since 1993 under the language and framework of the *Representation Agreement Act*;

- Contradict the policy goal of simplifying personal planning processes because it appears that this one Act will roll out up to 5 legal planning tools.⁵
- Finally, we are concerned by the restrictive time table for consultation, particularly in light of the late introduction of the assisted decision making aspect and the fact that details of the new Act remain limited. Given the wealth of community concern and past involvement in this issue we respectfully request that more time is allowed for detailed consideration of the proposed reforms.

IN SUMMARY

- The proposed reforms run counter to current initiatives in the Ministry of Child and Family Development;
- The proposed reforms will severely limit the control and self determination individuals with developmental disabilities and their families can experience in our community;
- The proposed reforms return to an out dated and oppressive definition of capacity;
- The proposed reforms will increase the cost, complexity and diminish the effectiveness of supportive and substituted decision making for individuals with developmental disabilities and their families and personal networks;
- The proposed reforms represent a significant retrenchment on the broadly supported reforms embodied in the *Representation Agreement Act*;
- We are not convinced of the need for the proposed reforms;
- We are concerned by the limited time allotted for consultation.

We strongly urge the Attorney General to withdraw the proposed reforms and focus on continuing to implement and increase the effectiveness of the Representation Agreement Act and related legislation.

⁵ Ibid p.2-3

HOW TO CONTACT THE COMMUNITY LIVING COALITION

If you wish to clarify any of the above or discuss these concerns further please contact:

Mike Keating, Co-Chair
Community Living Coalition
1018 Ridgeway Avenue
Coquitlam, BC ,
V3J 1S5

604 939-8070,
FAX 603 939-8075

Linda Perry Co-Chair
Community Living Coalition,
c/o 17564 - 56A Avenue,
Surrey, B.C. V3S 1G3

Phone: (604) 575-2588
Fax: (604) 575-2589