



POWER OF ATTORNEY ESSENTIALS

Georgina* (82) was surprised to receive an unexpected call from BC in March. To her shock, an official from the Island Health authority was calling to advise that they had been called by Nanaimo police to intervene in her sister Nancy's (76) care and mental wellbeing. Apparently, an occupational therapist and nurse practitioner had been called in to interview Nancy and noticed that she was not eating or practicing self-care. Her telephone had been disconnected and her Hydro was also about to be shut off for non-payment. They reported that they would be assigning a team to assess her full care needs and required that family meet with this team to help develop a full care plan in the next week. Georgina and Nancy's other sister Janet (79), in Toronto, quickly booked flights to Nanaimo.



Michael Berton, CFP®, RFP, CLU, CHS, FMA is a Senior Financial Planner with Assante Financial Management Ltd. In Vancouver, (604) 678-3096. Michael has taught Financial Planning courses at BCIT and TWU. He has written for *Advisor's Edge*, *Advocis FORUM*, and *Advisor.ca*. He is married to another

financial planner, has three children and lives in North Vancouver. Always discuss your particular circumstances with a financial planner prior to acting on the information above.

* Names have been changed.

Upon arrival, they were shocked by the extent of Nancy's decline, her confusion and gaunt appearance. Always a thorny stubborn personality, Nancy had preferred living alone and had estranged herself from family and friends over the years so that no-one had been around to observe her decline. The medical team suspected that the sudden decline had been brought on by an undiagnosed stroke months before. Although Nancy recognized her sisters, she was confused between past and present, afraid of her stove and kettle and overwhelmingly dependent on her TV for what social friendship it might provide. She actually reported that she was planning to go fishing on Saturday with the guys in her TV. Her old car sat in the parking lot with expired insurance, not driven for months. She would no longer be permitted to drive it.

Clearly, she would need help with both care and finance. She had become a hoarder, requiring the two sisters to spend days pouring over the stacks of paper records in search of all the important legal documents – Enduring Power of Attorney (EPOA), Representation Agreement (A BC “Power of Attorney” for Health care) and her Will. They wanted to find all these items to manage her needs now and ensure her final wishes were known and respected before her decline got any worse. Her papers were squirreled away all over her three-bedroom co-op condo. The sisters waded through years of unpaid bills, unanswered mail looking for these important documents. A will was discovered between a stack of magazines but there were no advance care documents. Letters from her pension plan requiring her to confirm her status to continue receiving payments lay unanswered. It became apparent that she had not left authority for anyone to take responsibility for her personal care, legal, or financial affairs. In her current state it was no longer possible for her to give anyone that authority.

Seeing the crisis about to unfold, Georgina and Janet personally took care of her outstanding bills, and had her telephone reconnected. They visited her bank to advise them of her condition, but without a EPOA they were barred from any financial information or the ability to automate payment of her bills. Bank statements found at home indicated that only a few monthly



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expenses were paid automatically. The statements also revealed a host of automatic monthly charitable donations that reduced the funds she would now need to cover her medical costs.

The most important new financial matter was to arrange for payment of her much-needed medical support from Island Health. The regional health authority provides support services using an income-test which Georgina and Janet had to complete from scraps of documents they had unearthed in the house. Nancy's on-going pension income, CPP, and OAS income meant she would have to pay \$1200 month for care workers to visit her twice a day to ensure she had eaten and was taking her meds. To ensure proper nutrition, Georgina and Janet were asked to arrange to pay for frozen meals to be delivered to the house each week. Although care workers would do her laundry, the washing machine had been broken for years, a replacement was needed. There were also new pharmaceutical expenses to cover somehow. As there was no family nearby, a companion service was engaged to ensure she had a social visit twice a week and to keep family advised of any problems. Without the EPOA the sisters found themselves covering these expenses in the short term until someone could gain authority to access Nancy's money to reimburse them. Not all families are fortunate enough to have the extra cash flow to manage this at the best of times.

Very little else could be done without legal authority for her care and financial affairs, so the two sisters began the long process to obtain court-ordered adult guardianship. In BC this falls under two separate frameworks:

1. One for assisting abused and neglected adults
2. One for the appointment of and authority of personal and property guardians

The first is for situations where a vulnerable adult is unable to seek support and assistance because of physical restraint, a physical handicap or an illness, disease, injury or other condition that affects their ability to make decisions about abuse or neglect. The Public Guardian and Trustee and certain other designated responders have the legal mandate to investigate and respond to these situations.

The second framework is for situations where an adult needs ongoing assistance making decisions and informal help is not sufficient and no advance planning documentation (Enduring Power of Attorney, Representation Agreement, Advance Directive, or a Trust) has been done. This was Nancy's situation.

Provincial legislation provides formal procedures to allow another person, or the state, to assume the adult's affairs and act on their behalf. In British Columbia, this is referred to as 'Committeeship' and can happen in a couple of ways:

1. Someone (usually a family member) can apply to the Supreme Court to be appointed private committee (guardian) under the Patients Property Act, or
2. The Public Guardian and Trustee can become the statutory property guardian of the adult's finances and legal affairs by Certificate of Incapability (COI).

There are two types of Private Committees:

1. Committee of the Estate (finances/property/legal) and/or
2. Committee of the Person (personal care/medical care/end of life matters).

It is important to understand that under Committeeship, the adult loses his or her decision-making rights and is considered a non-person under the law. As Committeeship is difficult to reverse, the adult will likely have a committee for the rest of his or her life.

While in Nanaimo, Georgina and Janet met with a lawyer, who gathered information about Nancy, her Island Health team's written determination of incapacity, and a thorough listing with addresses of her immediate and extended family. He drafted applications for both sisters as committees as well as 32 affidavits, which were mailed to every one of Nancy's sisters, nieces, and nephews around the world. These documents would serve to acknowledge and authorize the authority being granted. Some of the people being asked to sign these documents had not been in contact with Nancy in decades. A large undertaking, it took more than 8 weeks for all these documents to be signed, witnessed, and returned to the lawyer.

When completed in late May, these were submitted to the Supreme Court of British Columbia, which was working slowly during the spring pandemic crisis. The final court order was eventually granted in late September.

Georgina and Janet returned to Nanaimo, met with the lawyer, and were instructed about their powers. They were able to obtain court stamped copies of the court order (The courts retain the original document). Georgina, as Committee of Estate was granted various levels of access to banks accounts and investments. If further



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access becomes necessary, the order requires special application to the Public Guardian and Trustee (PGT). Further, the committee of estate, is required to "pass accounts", (an audit report) to the PGT one year from the order date. Lastly, the document grants authority for Nancy's funds to be used to pay the legal bill of \$8,000.

All this inconvenience, delay, expense, and additional work could have been avoided had Nancy drafted a simple power of Attorney and Representation agreement before she had lost capacity. Instead seven (7) months passed by with family covering her costs while being unable to assist with important matters. Properly drafted, signed, and witnessed EPOA and Rep Agreement documents are an essential part of any person's estate plan and are much cheaper to do before they are needed! They are at least as important as a will. Check to see that you have these and know where they are. Make sure your family knows too. If you do not have these, make it a priority to have them drafted as soon as possible. This is both important and urgent.

RESOURCES FOR POA HELP

- A notary public
- Your family lawyer
- Online resources such as seniorsfirstbc.ca or the Government of BC's **BC Seniors Guide**.