

Get the Facts:

GUARDIANSHIP LEGISLATION AND THE B.C. MENTAL HEALTH ACT

- The new Guardianship legislation has been designed to allow people with disabilities the right to exercise as much choice over their life decisions as possible.
- The Guardianship legislation applies equally to people who are disabled by mental illness. Many people with mental illnesses presently have written agreements (sometimes referred to as "Ulysses Agreements") with friends and relatives that stipulate what should be done in case they are incapacitated by their illness. These conditions are clearly set out so that financial and family affairs and matters relating to medical care and treatment can be stipulated in advance, and representation assigned to someone who can act on their behalf.
- The only exception in this respect applies to someone who may be involuntarily committed to hospital. In this case, the B.C. Mental Health Act can "override" or supersede a formal Representation Agreement.
- The Mental Health Act overrides on the Guardianship legislation were put in place to safeguard people with severe mental illness from entering into Representation Agreements stating that if they are involuntarily committed to hospital for their illness, they shall not receive treatment for that illness.
- Without the Mental Health Act overrides, a chronically ill person who makes such an agreement (not to receive treatment) will ultimately be caught in a trap of their own making. This tragic situation has occurred in Ontario. The person who is ill must then suffer the devastating symptoms of their illness (often in isolation for their own or others' protection)-forbidden by law to receive medication that would allow them to regain their health and leave the hospital.
- Arguments to remove the Mental Health Act overrides from the Guardianship legislation in the name of "civil liberties" under the Charter are illogical. Such a move would, in fact, have quite the opposite effect. Involuntarily committed to hospital because of their illness, the person would be legally trapped...their only "rights and freedoms" consisting in the right to continue to deteriorate further and further, and the freedom to remain forever ill.

"The purpose of the Mental Health Act overrides on the new Guardianship legislation is clear. If we do not maintain the overrides, we will fail to protect those who are most vulnerable in our society."