

Description of Legal Terms

Many different legal terms were mentioned by participants during their interviews. We have provided a list and brief definitions of these terms below.

The following terms were mentioned by caregivers we interviewed. Please click on a word and a definition will appear.

Power of attorney (in Quebec, this is often referred to as a “mandate”): A power of attorney is a legal document that gives a person (sometimes a caregiver) the designation of “attorney,” or in Quebec, of “mandatary”. This is the legal right to act on behalf of another person (typically the care recipient, and called the “principal,” or the “mandatary” in Quebec). A power of attorney can name one or several persons as the attorney.. There are several types of power of attorney, addressing a number of issues which can include issues pertaining to business, property, personal care, finances, or other legal decisions. The attorney is obliged to make decisions on the principal’s behalf, according to his or her best interests or, if known, prior instructions. Different provinces have differing rules on the formalities of how power of attorneys is signed and how they take effect. As well, there are different forms of power of attorney, as follows.

Ordinary power of attorney (also called, “non-enduring power of attorney”): This gives the attorney legal authority to make decisions concerning the principal’s finances and property. The legal authority given to the attorney can be quite specific (e.g. only to cash cheques) or general (e.g. authority to manage all personal finances). An ordinary power of attorney *stops being valid if it is cancelled by the principal or, more commonly, the principal becomes mentally incapable.*

Enduring power of attorney (also called a “durable” or “continuing power of attorney”): This is the same as ordinary power of attorney except that it continues to be valid *even after the principal has become mentally incapable.* Sometimes, the enduring power of attorney may require that the principal become mentally incapable before it takes effect.

Health care power of attorney (also called a “power of attorney for personal care”): This gives the attorney the legal authority to make decisions concerning the principal’s medical care, housing, hygiene, clothing, food, and safety. It *only takes effect when the principal has become mentally incapable,* which is the key difference to other types of power of attorney. Health care power of attorney is often complemented by an “advance directive” or “living will” (discussed below) setting out the principal’s wishes, which the attorney is typically obligated to follow.

Mandate given in anticipation of incapacity (Quebec only): This is a document that lets a person (the “mandator”) name, in advance, one or several people (the “mandatary”) to look after both his or her personal care and finances and property if he or she become incapable of doing this .. It takes effect *only after the Court has declared the mandator to be incapacitated (a process known as “homologation”).* Mandates given in anticipation of care also contain explicit instructions regarding the mandator’s health wishes (e.g. level of care desired) and how finances are to be managed.

Representation agreement (British Columbia only): This allows a person to appoint someone as his or her legal representative to handle the care recipient’s financial, legal, personal care and health care decisions, if the care recipient is unable to make them on his or her own. Representation agreements take effect *as soon as they are signed, unless the agreement sets out a future time (e.g. upon mental incapacity).*

Health care advance directive (also called a “living will”): A living will is a written statement of a person’s health care and medical wishes. But unlike a health care power of attorney, it does not appoint another person to make health care decisions on ones behalf. Living wills often complement health care power attorneys by spelling out what the care receiver would want in certain medical situations (e.g. whether to insert feeding tubes, pursue aggressive treatment, or resuscitate in the event of cardiac

arrest). In many cases, while the living will may be a guide for health care professionals involved in care it may not have legal status in your province.

Guardianship (in Quebec, often called “protective supervision,” “curatorship,” or “tutorship”):

This is a legal mechanism, supervised by the courts, to protect people who become incapable of caring for themselves or managing their financial affairs, and who have not designated anyone to act in that capacity. The caregiver (the “guardian” or, in Quebec, the “curator” or “tutor”) has the legal authority, and the corresponding responsibility, to make care decisions or manage the financial affairs of another person. Guardianship is typically used when there is no enduring power of attorney or health care power of attorney (or, in the case of Quebec, a mandate given in anticipation of incapacity or, in BC, a representation agreement) in place before they became incapacitated. This is because a person cannot enter into a power of attorney agreement once they become mentally incapable. An application for appointment as a guardian must be made to the court.

In each province, there is an option of “public guardianship” which means that the government acts as the care receiver’s guardian when no family member or other person (e.g. friend) is able or willing to fill that role. The public guardian has the same legal authority and responsibilities as a “private” guardian.

Proxy health care decision-maker (also commonly called a “legal representative”): This is a person authorized by law to make health care decisions on behalf of another person when they are incapable of giving consent’. Typically, the law follows a hierarchy of persons who can act as legal representative. This commonly starts with their guardian (or in Quebec, curator or tutor), the person named in a health care power of attorney (in Quebec, a mandate given in anticipation of incapacity or, in BC, a representation agreement), then spouse, then other family members, then friends.

Will: A will is a legal declaration by a person (called the “testator”) that names another person to manage ones’ estate (called the “executor” or, in Quebec, the “liquidator”) after death, and spells out how assets are to be divided. There are several types of wills, and different rules apply depending upon the type, some of which may require Court approval (called “probate”). The law for wills is similar across provinces, except for Quebec which applies the Civil Law. When a person dies without a will (called dying “intestate”), there are special laws that govern how assets are divided, independent of the surviving family’s wishes.

Disability insurance: This is a private contract (an “insurance policy”) between an insurance company (the “insurer”) and a person (the “insured”). The insurer agrees to pay an amount of money (called the “indemnity”) if and when the insured becomes disabled, in exchange for previous regular payments (the “premium”). The definition of disability is set out in the insurance policy, and may involve several medical assessments for evidence of disability. People can buy disability insurance on their own, or sometimes employers offer it as part of a benefits package for employees.

Compassionate care leave: This is a program set up by the federal government that provides for payment of Employment Insurance benefits for an employee to take up to six weeks off work in order to care for a gravely-ill family member who has a significant risk of death within the next six months. The federal government has strict eligibility criteria. Because compassionate care leave is operated by the Employment Insurance programme, the key condition is that the employee must have accumulated 600 hours of “insured work” in the past year. Non-working people are not eligible for compassionate care leave payments. The employee’s job is typically protected during the leave under provincial human rights legislation.

Demande d’exonération (Quebec only): The Government of Quebec requires that residents of long-term care facilities (CHSLDs) make a co-payment to contribute to the cost their care. The amount set is based upon the financial resources of the resident and the type of room they have (e.g. one-person rooms are more expensive than shared rooms). The *demande d’exonération* is an application made to the Government asking it to re-evaluate the amount of the resident’s contribution, typically to lower it.