

## Representation Agreement Act

# AMENDMENTS

Amendments to British Columbia's Representation Agreement Act came into effect on September 1, 2011.

This fact sheet highlights some of the key changes and how they may affect a Representation Agreement made before September 1, 2011.

If you are making a Representation Agreement for the first time or are making a new one, please see the Nidus fact sheet on [Representation Agreement Overview](#), which is based on the new legislation.

### **Do I have to make a new Representation Agreement because of the amendments?**

No. A valid Representation Agreement (RA) made before September 1, 2011 remains in effect. However, some of the changes will apply to these RAs as well as new ones. It will be important for those authorized in your RA to know about the changes that affect their duties.

### **Changes and a Representation Agreement under Section 7 or Section 9**

#### **Restrictions on who can be appointed in a Representation Agreement**

The amendments restrict who can be appointed as a representative or alternate representative in an RA made on or after September 1, 2011. You cannot appoint someone who is compensated to provide health care or personal care services to you (for example, a paid caregiver), unless the person is your spouse, parent or child.

You also cannot appoint someone who is an employee of a facility where you live, if the facility provides health or personal care services to you. Your spouse, parent or child is exempt from this restriction. The amendments say these new restrictions do not apply to a valid RA made before September 1, 2011. For example:

*Anton made his Representation Agreement in 2008, naming his cousin Janine and his parents as representatives. Anton moved in with his cousin three years ago when his parents went to live and work in England. Janine prepares Anton's meals and helps him with daily activities. Anton's parents made sure she gets paid a monthly fee for her services. The law says Janine may continue to act as Anton's representative even though she is not his spouse, parent or child because Anton's Representation Agreement was validly made before September 1, 2011.*

Please note that the Community Care and Assisted Living Act restricts an owner, operator, employee, contractor or volunteer of a licensed facility (including extended care facility and community living agency) from acting as a representative for a person in care or formerly in care. The exceptions are if the representative is your spouse, parent or child.

#### **Duties of a representative to keep records**

The amendments add new requirements for keeping records about health care and personal care matters. The change applies as of September 1, 2011, to any representative acting under authority for health care and/or personal care, no matter when the RA was made.

For more details on the requirements, please see the Nidus fact sheet on [Role of a Representative](#).

#### **Right of a representative to access information**

A representative has the right to request information and documents that the adult they represent is entitled to and that relate to the representative's area(s) of authority. The amendments also allow a representative to request information and documents an adult is entitled to and that relate to the adult's incapability.

#### **Clarification of representative's authority**

An amendment to the Representation Agreement Act makes clear that a representative cannot consent to consultation, treatment or care related to the sterilization of an adult for non-therapeutic purposes.

### **Changes and a Representation Agreement under Section 7**

#### **Clarifications for Section 7 authority**

An amendment makes clear that a representative named in an RA with only Section 7 standard powers may not consent to restraining, moving or managing the adult or authorize anyone else, if it is against the adult's will.

In certain situations, an adult may have an Enduring Power of Attorney (EPA) in place and also make an RA with Section 7 standard powers that includes routine management of financial affairs. The Power of Attorney Act amendments clarify that if there is a conflict or inconsistency between the financial authority in an RA and an EPA, the EPA takes priority.

## Changes and a Representation Agreement under Section 9

### How do I know if I have a Representation Agreement with Section 9 Broader Powers?

If you have a Representation Agreement with Section 9 broader powers made before September 1, 2011, you would have had to meet with a lawyer who would have completed a Certificate of Consultation (Form 2). Check your RA for a lawyer's signature and the consultation certification.

### Broader financial authority becomes Enduring Power of Attorney

A Representation Agreement can include authority for financial affairs. Routine finances are covered under Section 7. Non-routine or broader finances could be covered under Section 9. Before September 1, 2011, the law said that if you consulted with a lawyer, you could include all financial affairs in an RA with financial powers under Section 7 and Section 9. (This would be equivalent to making an Enduring Power of Attorney.)

You can check your RA for the following or similar wording related to the representative's authority under Section 9:

*"do, on my behalf, any thing that can be done by an attorney acting under a power of attorney"*

If you have this wording in your RA, the amendments say that this authority is now treated as if it is an EPA under the the Power of Attorney Act.

When your representative has to use this authority, they must follow the requirements under the Power of Attorney Act. See the Nidus fact sheet on [Role of an Attorney](#).

You may want to review your document with a lawyer or notary public to make sure you and your representative understand the effect of this change.

### Note

If you have an existing Enduring Power of Attorney, see the Nidus fact sheet on [Amendments to an Enduring Power of Attorney made before September 1, 2011](#).

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## Nidus Personal Planning Registry

Is your existing Representation Agreement registered with the **Personal Planning Registry**? Find out how you can register information about your Agreement so it is available when needed. You can also store a copy (image) of your Agreement in the Registry and share read-only access with other to speed up communication. Read more at [www.nidus.ca/registry](http://www.nidus.ca/registry).

## Transition Issues for Advance Care Planning

Ever since the Representation Agreement Act came into effect in February 2000, the requirement to consult a lawyer has presented a barrier to access for making Representation Agreements with Section 9 broader powers. This barrier shaped how these Agreements were used, resulting in some misconceptions.

For example, we have heard remarks such as, 'I don't know why anyone would make a Representation Agreement with Section 7 standard powers, when they could make an Agreement with Section 9 broader powers.'

There are many reasons why a person may have chosen to make an RA with Section 7 standard powers instead of an RA with Section 9 broader powers, before September 1, 2011 and after. It is important to respect the context that led to this practice.

### Barriers to access

For 11 years, prior to the amendments, many adults — including seniors — have used the RA with Section 7 standard powers as a future planning tool for health care and personal care. Even if they wanted to make an RA with Section 9 broader powers, it was very difficult to find a lawyer who was knowledgeable, willing and affordable. These seniors should be applauded for their advance care planning efforts and for their use of the legal tools reasonably available to them.

### Practical approach has benefits

For many seniors, the choice is a practical one: if they do not own real estate and have simple financial affairs (as many do), they can plan for everything in one document, under Section 7. Routine finances, as well as personal care and minor and major health care can all be covered. They also like the built-in safeguards provided in the Representation Agreement Act, especially the focus on self-determination instead of the best interest approach and the ability to name a monitor.

As well, they are comfortable with the idea that decisions about refusing life supporting care will, through default, be made by a consensus of family and the medical team, since they cannot grant this authority to a representative under Section 7.

### End-of-life decisions

Agreements with Section 7 standard powers have often been dismissed as irrelevant to end-of-life care. This is not true. For example, consent to medication for pain is a common end-of-life decision, and is covered under minor health care. It is easy to fall into the habit of using the terms 'end-of-life care' and 'refusing life support' interchangeably, but these are not the same.