

Representation Agreement

Overview

Some adults will make a Representation Agreement section 7 (RA7); the majority of BC adults will make a Representation Agreement section 9 (RA9). Read more to find out what fits your situation.



Most links are for resources available on the Nidus website at www.nidus.ca > Information (blue menu bar) > [Representation Agreement](#)

What is a Representation Agreement?

A Representation Agreement is a legal document under the Representation Agreement Act of BC (RA Act) and the only legal document to use when planning for health and personal care matters.

You must be an adult to make a Representation Agreement. In BC, the age of adulthood is 19.

One of the goals behind Representation Agreements, is to ensure dying with dignity. A Representation Agreement is an **essential document for quality-of-life until end-of-life**.

It authorizes a person or people to assist an adult with decision making (sometimes called supported decision making) or to act on the adult's behalf (sometimes called substitute decision making).

There are **different types of Representation Agreements** that an adult may make—depending on their capability at the time of making it.

What are the different types of Agreements?

A representative's powers or authorities are listed in two different parts of the RA Act, called sections — section 7 and section 9. The different types of Agreements have become known as RA7 and RA9.

While the legal framework is not quite this straightforward, we will use these terms for now.

The **key difference** between the RA7 and the RA9 is the **capability requirements** of each.

- The RA9 is for adults who are considered capable to understand the nature and consequences of the proposed RA9 at the time of making it.
 - This is based on the traditional definition of capability that also applies to Wills, types of powers of attorney, and contracts.
- The RA7 is designed for adults whose mental capability to 'understand' is in question.
 - The RA7 has a different definition of capability than the traditional one and is unique to RA7.

This Overview provides information that applies to both the RA7 and RA9. On pages 4 & 5 you will find information on fact sheets and forms for each.

What are some examples?

"My son needs dental work but his autism affects his capability to give informed consent as required by the law for health care consent. He made an RA7 All, naming me as a representative. The dentist has a copy on file."

The parents helped their son make an RA7 All after his 19th birthday. A representative can delegate the tasks of booking and transportation to a dental appointment to the son's paid support staff, but the representative can NOT delegate consent or decisions about care or treatment.

"My mom was 91 and in hospital and, at the time, was not capable of informed consent. The medical team wanted to do brain surgery. I said 'NO, she doesn't want that.' They said 'you don't get to make that decision.' I said 'YES I do' and pulled out the Representation Agreement that my mother made. It names me as the representative."

Mom made an RA9 ahead of time, when she was capable of understanding.

"Our friend, Sasha, has advanced dementia. We live in the same apartment building. Sasha's spouse, Tim, was dying of cancer and very concerned because he and Sasha have no family. We got together as a group and agreed to be part of Tim's RA9. We also agreed to be named in Tim's Enduring Power of Attorney because he had a pension in another province and needed help to make arrangements. Tim gave a copy of the RA9 to the hospice/palliative care team so they knew who to call about his health and personal care needs and decisions. Tim helped Sasha make an RA7 All. It names their three friends as the representative, alternate, and monitor. It gave Tim peace of mind to know that Sasha would be well cared for after he died."

Nidus helped answer questions and provide information for the friends and Tim. This example shows the importance of social connections—wherever you live. Representation Agreements preserve the dignity and respect of the person, while providing safeguards.

Be Pro-active. Choose to plan!

Making a Representation Agreement lets you stay in control of who will help you or will act on your behalf — if you have an illness, injury, or disability that affects your mental capacity. This applies to ALL adults in BC. Even a spouse is limited in the type of decisions and tasks they can do on behalf of their spouse.

What does it mean that the RA7 has a different definition of capability?

The traditional definition of capability (for making legal documents such as a Will, types of powers of attorney, an RA9, or a contract) requires that you must 'understand the nature and effect' of the specific document at the time you are making it.

This traditional definition dates back hundreds of years. It leaves out many citizens whose capability to meet this traditional definition can be affected by disability, illness, or injury. For example:

- Adults who have a disability from birth (special needs, autism, fetal alcohol spectrum disorder).
- Adults who had an illness or injury during childhood (meningitis, sports or car accident).
- Adults who had an illness or injury in adulthood (severe stroke, advanced dementia, brain cancer, serious car accident or fall).

If an adult cannot meet the traditional legal definition to 'understand,' they are vulnerable to adult guardianship (called Committeeship in BC). Under guardianship, adults lose their civil rights and become a non-person.

The Representation Agreement Act (RA Act) is the result of a law reform initiated by citizens and community groups in BC. The RA Act is based on people's real life experiences and some aspects of the RA Act are unique in the world.

The RA Act has been supported by all political parties in BC because:

- It prevents social isolation;
- It is sustainable (unlike public guardianship);
- It provides accountability and safeguards; and
- It is about equality and human rights.

Unfortunately the RA Act was never properly implemented. No government has funded education.

Nidus was set up by community groups to be a resource and it provides education to all, thanks to our donors and modest fees-for-services.

Representation Agreements are working, but the lack of education in all sectors (legal, health, financial, government, community) can be frustrating and an extra burden for those supporting a spouse, family member, or friend.

If you encounter problems, contact your [MLA](#).

The RA7 is a legal alternative to guardianship!

One of the purposes of the RA Act is to offer a way for adults to avoid guardianship. This is possible because the RA7 has a different definition of capability, which provides a way for adults to give legal status to personal supporters.

Just because an adult needs help with decision making, does not mean they should lose their rights and become a non-person in order to get help.

While the above statement may seem obvious to those living the experience, it is not generally reflected in the policies and practices of service systems and institutions.

But I thought.....

You may have learned about Representation Agreements from other sources or in the past.

There were amendments (changes) to the Representation Agreement Act, the Power of Attorney Act, and the Health Care Consent and Care Facility Admission Act as of **September 1, 2011**.

These changes brought certainty and also complexity. It makes education very challenging. We also see more confusion and misinformation.

If you made a valid Representation Agreement before September 1, 2011, it is still valid—you do not have to make a new one just because of the amendments.

Some changes, such as to the duties of a representative, apply regardless of when the document was made. You can find information about roles at www.nidus.ca — click **Information** (top blue menu bar) > [Representation Agreement](#)

Nidus' role

Nidus is committed to providing accurate and up-to-date information about the law and practical aspects of planning. Nidus also produces policy analysis to share experiences, of what is and is not working, with government and professional bodies. Nidus is a resource to professionals, including lawyers, as they also have education needs. However, operating on bits of project funding for many years has put a strain on our ability to build and maintain core programs. Nidus does not want to put limits on our education services, especially as needs increase. See page 5 on ways to help.

The RA Act was passed in 1993 and came into effect in February 2000. It is the result of very hard work and a lot of dedication!

The RA Act is more relevant today than ever, especially given the aging population.

Who can make a Representation Agreement?

To make a Representation Agreement, you must be an adult — 19 years of age or older.

Representation Agreements are designed to be used by All adults:

- Most adults are considered capable of understanding and will make an RA9; or
- If an adult's capability to 'understand' is currently in question they may make an RA7.

To locate fact sheets on the RA7 and RA9 and other resources from Nidus, see page 4.

How do I make a Representation Agreement?

There is NO requirement to consult a legal professional to make any type of Representation Agreement. (Before Sept. 1, 2011 only a lawyer could 'sign-off' on an RA9 but, due to lack of education, not many lawyers provided this service.)

There is also NO requirement for a medical assessment to determine if an adult may make a Representation Agreement. This goes against the principles of the law reform.

Accessibility was one of the principles behind the legislation. This, combined with the lack of education in any sector, makes Nidus a crucial resource. Nidus provides self-help materials and Representation Agreement forms through its website. Read the Nidus fact sheet that applies to your situation to find the relevant form (see p. 5).

FEATURES THAT ARE COMMON TO RA7 & RA9

What roles are available in an Agreement?

The RA Act describes three roles. A representative is necessary, other roles are optional.

- A representative(s) is the person who has legal authority to assist you or to act on your behalf.
- An alternate representative(s) is a back-up in case your representative is unable or unwilling to act or continue to act.
- A monitor is a safeguard and ensures that the Agreement is working for you. A monitor does not make decisions for you and they are not like an alternate who 'moves up.' Only one monitor can be named in an Agreement (the law does not provide for naming more than one or for naming an alternate monitor.)
 - An RA7 that includes authority for routine finances will commonly include the monitor role. The law requires an extra safeguard if finances are included and a monitor meets this requirement. Read the [RA7 fact sheet](#).

Who can I name in my Agreement?

The idea of Representation Agreements is to strengthen or create a PERSONAL support network

around an adult—so they have help when ill or injured and when dealing with service systems. An Agreement gives legal status to personal supporters.

Most people name a spouse, family member, or friend in their Agreement. Those you appoint may live in another city, province, or country.

There are many factors to consider about who is named in your Representation Agreement, such as:

- Your relationship with them;
- Their skills and abilities;
- Their willingness to work with others named in your Agreement; and
- Their respect for your wishes and values.

What are the restrictions on who is named?

Due to amendments on September 1, 2011, the law now has some restrictions on who you can name. This applies to **a representative (or an alternate)**. These restrictions do NOT apply if the individual is your spouse, parent, or child.

You can NOT name an individual as your representative (or alternate), if:

- They are compensated to provide health care or personal care services to you (e.g. a paid caregiver, home share provider); or
- They are an employee of a facility where you live, if the facility provides health care or personal care services to you.

Agreements made **before** September 1, 2011 did not have these restrictions and the amendments say these Agreements may continue to be in effect and are NOT affected by the restrictions.

Who can be named as a monitor?

To be named a monitor, an individual must be 19 years or older and willing to accept their duties. Their duties are outlined in section 20 of the RA Act. Although it is not restricted, it could be a challenge for someone in a paid role, related to providing services to the adult, to be named as a monitor. See the Nidus fact sheet on [Role of a Monitor](#)

What are the duties of a representative?

The duties of a representative are outlined in section 16 of the Representation Agreement Act, which says that your representative must act honestly, in good faith, and within the law. Your representative is there to assist you to participate in decisions about you. This means they need to be contacted and involved—they need to know what is going on in case they are called in at some point to act on your behalf.

The RA7 and RA9 fact sheets give examples. You can find these and more Nidus resources on p. 4. Read about duties in [Role of Representative](#)

Does my representative get paid?

Representatives, alternate representatives, and the monitor are entitled to be reimbursed for reasonable out-of-pocket expenses related to carrying out their duties.

The law says you cannot pay a representative a fee (on top of expenses) for making health care decisions on your behalf. If you want to pay your representative(s) a fee for other authorities, this must be spelled out in the Agreement and it must be approved by the Supreme Court of BC.

When should I make an Agreement?

The best time to make an Agreement is before a crisis occurs. Most people will make more than one Representation Agreement in their lifetime.

What powers does an Agreement give?

Both an RA7 and RA9 cover minor and major health care matters including routine and risky tests, dental work, and surgery. An RA9 covers some additional powers/authorities for health care because an RA9 must be made by an adult who is capable of understanding what it means when they make it. Details of the authorities for each type of Agreement are discussed in the specific fact sheets.

What cannot be authorized in an Agreement?

The RA Act says that you can NOT authorize a representative:

- To do anything that is against the law.
 - For example, it is against the law for anyone, other than a physician or nurse practitioner, to provide you with medical assistance in dying. You also cannot authorize your representative to request MAiD for you from a physician or nurse practitioner if you are incapable. You must be capable of consent to request MAiD.
- To give consent to your sterilization for non-therapeutic purposes.
- To refuse consent to placement or treatment related to your mental disorder if you are involuntarily committed under the Mental Health Act.
 - This is often referred to as the 'Mental Health Act Override.'
 - A representative retains their authority for decisions not related to your mental disorder.

When does an Agreement take effect?

A Representation Agreement should be in effect when all signing is completed, so it is ready-to-go when needed, including an emergency.

The adult and witnesses must sign together at the same time. Others named in the Agreement will have paperwork to sign but do not need witnesses and can sign at a later time and different times.

Detailed instructions come with the forms by Nidus and, if followed, you will have a valid Agreement.

Make sure the Agreement is registered (this is your ultimate back-up and reminds you where the original is located).

Never lose the original—you need it to make copies and it is proof of authority. Never make changes on your original; keep information updated in the Registry.

What if we have to make changes?

Some changes to a Representation Agreement do not make the Agreement invalid. Other types of changes require revoking (cancelling) the existing Agreement and making a new one. See the Nidus fact sheet on [Making Changes](#)

Can I revoke my Representation Agreement?

Yes, you (the adult) can revoke (cancel) your Representation Agreement. The RA Act outlines procedures for revoking. Making a new Agreement does NOT automatically revoke a previous one. See the Nidus fact sheet on [Revoking an Agreement](#)

Can a representative resign?

Yes, a representative, alternate or monitor may resign from the Agreement they are named in. Sometimes this may require the adult to make a new Agreement. See the Nidus fact sheet on [Resigning from a Representation Agreement](#)

When does a Representation Agreement end?

A Representation Agreement ends if you revoke (cancel) it and when you die. An Agreement also ends if someone is appointed to be your legal guardian (in BC, called a committee). See [Lifespan of a Representation Agreement](#)

How do I register?

Nidus operates the Personal Planning Registry where you can register the Agreement after it is completed. You can also register 'Other Documents' you might need if evacuated due to a wildfire or flood. Do NOT send any paperwork to Nidus. The Registry is online for you to do it yourself.

The first step is to Create an Account; the second step is to register. Go to www.nidus.ca - click the **Registry** tab (top blue menu bar) > select [Registry Instructions](#)

Where do I find fact sheets and other Nidus resources?

Find Representation Agreement resources (mentioned in this fact sheet and more) on the Nidus website at www.nidus.ca

Click on **Information** (top blue menu bar) > select [Representation Agreement](#)

Where do I find Representation Agreement forms by Nidus?

We strongly recommend that you read the [RA7](#) or [RA9](#) fact sheets.

The fact sheets give examples and more details.

The fact sheets also explain where to find the relevant Representation Agreement form on the Nidus website www.nidus.ca (homepage) that **matches** the situation.

How can you help yourself and Nidus?

Nidus does not receive funding for core education and assistance activities. This includes answering questions we receive by email.

Please help us continue to be a leading resource:

- We need to regularly review and sometimes revise our materials and the website.
 - This is a dynamic and emerging area of law and practice and Nidus is a content expert.
- There is currently no organization like Nidus in any other province or country.
 - We try to respond to requests from other jurisdictions, while keeping our focus on helping BC to be a model of best practices.

You can help by **making a donation** to Nidus (see the box below). You can donate online or mail a cheque — make an annual donation or become a sustaining donor. We are also grateful for the donations that executors and beneficiaries have given when settling estates.

You can also help by **promoting the Registry service**. The Registry pays for itself and any surplus goes to supporting the charitable education programs of the Nidus Resource Centre.

<i>Helping a Relative with a DISABILITY</i>	<i>I'm planning on the FUTURE PATH</i>	<i>Caring for an Adult Who NEEDS HELP NOW</i>
Helping an adult with a disability from birth or childhood? Info & Forms for RA7 <i>Adult may make even if considered not capable to understand (e.g. special needs)</i>	Are you considered capable now and want to prepare? Info & Forms for RA9 & more <i>For those capable to understand now—don't wait for a crisis!</i>	Helping someone whose mental capability was affected in adulthood? Info & Forms for RA7 <i>Adult may make even if considered not capable to understand (e.g. severe stroke, advanced dementia).</i>
Click FIRST photo	Click MIDDLE photo	Click THIRD photo

Thanks to Nidus donors—like you—for funds to produce this information and other education resources.

You can help yourself and Nidus by making a tax receiptable donation through Canada Helps — click [DONATE NOW](#)

Background on BC's community-based law reform

The chart below is a 'before and after' snapshot of the law reform in BC. It shows the RA9 and RA7 as new planning documents after the law reform. Read the [RA9](#) and [RA7](#) fact sheets for more information.

	<i>Planning document for Financial Affairs and Legal Affairs</i>	<i>Planning document for Health Care and Personal Care</i>	<i>Planning document for Legal Alternative to Adult Guardianship (new definition of capability gives legal recognition to supported decision making)</i>
BEFORE <i>FEB. 2000</i>	Enduring Power of Attorney <i>Must understand when make it; used later if incapable.</i>	NO LEGISLATION OR LEGAL DOCUMENT AVAILABLE FOR THIS	NO LEGISLATION OR LEGAL DOCUMENT AVAILABLE FOR THIS
AFTER <i>LAW REFORM</i> <i>Representation Agreement Act provides new legal planning documents.</i>	Enduring Power of Attorney <i>Must understand when make it; used later if incapable.</i>	Representation Agreement section 9 <i>Must understand when make it; used later to assist, such as when capability fluctuates (supported decision making), or to act on behalf (substitute decision making).</i>	Representation Agreement section 7 <i>Adult may make even if not capable to 'understand.' Can cover aspects of all four life areas: financial, legal, health care, personal care.</i>