

BUILT-IN Safeguards for RA7 and How Others Can Help

Representation Agreements were created as a primary tool to prevent abuse. Representation Agreements facilitate the building and strengthening of support networks by involving people in various roles. Having more than one personal, caring relationship in our life is what keeps us safe.

You may hear RA7 and RA9 used to describe two types of Representation Agreements. The authorities or powers a representative may have are listed in section 7 and section 9 of the Representation Agreement Act (RA Act). Each section has different capability requirements.

Section 7 is governed by a broader and more inclusive definition and approach to capability than other legal documents such as for making a RA9, a Will or types of powers of attorney.

- A broader definition of capability (the RA7 approach) made some parties concerned about the potential for abuse. There are a number of built-in safeguards to address these concerns.
- There are four authorities, also called standard powers, listed in section 7 of the RA Act. These authorities have some limitations—a compromise for a broader definition of capability. Read more in [RA7 fact sheet](#).
- The RA7 helps us think about capability in new, more respectful and evidence-based ways.
- The RA7 law was supported by human rights lawyers, social workers, all political parties in BC, self-advocates and many disability and seniors groups and professional associations in the financial sector.

BUILT-IN SAFEGUARDS IN LEGISLATION

Financial powers are defined in law

One of the authorities from section 7 of the RA Act is routine management of financial affairs.

- 'Routine finances' is defined in the law (the Representation Agreement Regulation.) It lists what a representative cannot do.
- Click to read the [definition of routine finances](#).

Extra safeguard required for finances

If authority for routine finances is included in the RA7, an extra safeguard is required.

- The most common and flexible way to meet the extra safeguard requirement is to name someone in the **monitor** role.
- The **only** exception to the extra safeguard requirement is if the representative is the adult's spouse.

Prevent conflict of interest

People who are compensated for providing health care or personal care services to the adult (like paid staff) cannot be named as a representative or alternate when RA7 is made, unless they are the spouse, parent or child of the adult.

Each person named in RA7 signs a declaration

Each representative and alternate representative named in the RA7 must sign the RA AND complete a declaration—a Certificate of Representative/Alternate (also called Form 1)—to certify they accept their duties.

The monitor signs a Certificate of Monitor (also called Form 2)—to certify they accept their duties.

Adult signs RA7 in front of witnesses

There are restrictions on who can be a witness for a RA to guard against influence by a representative or an alternate.

- Witnesses must watch the adult sign and watch each other sign. Witness complete a Certificate of Witnesses (also called Form 4).

Duties based on self-determination

The RA Act sets out the duties of a representative in [section 16](#). The RA Act outlines an ethical decision-making process whereby decisions are made based on the adult's wishes/preferences, values and beliefs—when assisting or acting on the adult's behalf.

- The monitor's duty is to safeguard the adult's wishes/preferences and values.

Process for concerns and complaints

If a third party (like bank/credit union or hospital) has a concern about a representative's decision or action, they need to speak to the representative and any alternate and if possible, to the adult.

If things are not resolved, contact the monitor (if one is named). If no monitor, contact the Public Guardian and Trustee's office.

- The monitor has a legal duty to try to resolve the problem. If the monitor finds evidence of abuse, the monitor must let the office of the Public Guardian and Trustee (PGT) know.

- The RA Act and the PGT Act give the PGT (a government official) new and stronger powers to investigate concerns of abuse by a representative including to suspend financial transactions.

Protection from liability

The RA Act outlines specific protections from liability for institutions who act on a Representation Agreement [section 24(2)].

The legislation also provides protections for those named in a Representation Agreement, including the adult who it belongs to.

Nidus Registry

Communication is a key issue in abuse prevention. The Nidus Resource Centre operates a Registry service to facilitate communication.

- The Nidus Registry offers secure online storage for information and documents such as Representation Agreements, types of powers of attorney, Revocations and more.
- Like the PGT, staff of financial and health care institutions can be authorized to access relevant material stored in the Nidus Registry.

CHANGE - IT'S ABOUT TIME!

Old (Committeeship) gives way to new (RA7)

Adult guardianship (called Committeeship in BC) is based on old legislation and old ideas—some dating back hundreds of years.

- Under **Adult Guardianship/Committeeship**, adults are stripped of their civil rights and become a non-person.
- Just because someone has cognitive difficulties it does not mean they are inhuman. After all, any of us could need help at any time, due to illness (like Covid) or injury (like a stroke). How would we want to be viewed and treated?

The RA7 is about respect and dignity of the person. The RA7 recognizes:

- Non-traditional communication. (Some adults communicate through their behaviour.)
- Capability involves many factors including trust.

HOW OTHERS CAN HELP

How can financial institutions help?

Staff of financial institutions want to be cautious when recommending joint bank accounts or 'bank' power of attorney.

Joint bank accounts are common between spouses but can be risky with someone else.

- All parties to a joint bank account must be given information on risks.
 - » There are no safeguards.
 - » Any owner on the joint account has full access to the money regardless of who the money belongs to or what it is for.
- All parties need to give informed consent before a joint account is set up.

'Bank' power of attorney forms are limited in their use and must comply with BC law.

- 'Bank' forms only apply to the particular financial institution—and therefore cannot deal with taxes, pension benefits, Autoplan (ICBC), and many other financial-related matters.
- The 'bank' forms of the financial institution operating in BC must meet the requirements of BC's Enduring Power of Attorney legislation.

For someone with cognitive difficulties, the **RA7 is superior and more ethical** than a joint bank account or bank power of attorney. A RA7 provides accountability (those appointed sign acceptance of their legal duties). A RA7 protects the adult, the representative and the bank or credit union.

How can physicians help?

Physicians and other health care providers need to be cautious if putting an opinion about the adult's capability in writing.

It has been common practice for doctors to write a letter (or sign an affidavit) stating the adult is incapable of managing their affairs. But these opinions are related to legislation for Adult Guardianship/Committeeship, not for the RA7. Such statements can backfire.

To support the adult and the RA7, health care providers will want to **emphasize that the nature of the relationship between the adult and their representative is characterized by trust.**

Another supportive approach would be to endorse or add to documentation about how an adult communicates. Following is a resource suggested to supporters—[Expression of Preferences](#)

INFORMATION AND RESOURCES

Go to nidus.ca

Page 2/2