

Summary and Examples for Recommendations on the Community Care and Assisted Living Act and Bill 16, 2016

This summary focuses on the *Community Care and Assisted Living Act (CC&AL Act)* and the restrictions it puts on representatives named in a Representation Agreement.

The information in the box to the right shows how the CC&AL Act applies to a wide variety of care settings. Section 18 of the Act restricts employees as well as some other persons associated with a licensed care setting (perhaps the operator) from acting as a representative under a Representation Agreement. There are no exceptions – for example the employee cannot act as the representative, even if they are the adult’s parent or child. This creates potential problems for adults in the community living sector and for seniors, especially those with dementia.

A key concern is that section 18 doesn’t explain what ‘acting as a representative’ means. If a representative with authority for routine finances is disqualified, does it mean they can’t arrange with the bank for direct payment for fees to the facility, out of the adult’s account? Does this mean more referrals to the Public Guardian and Trustee to take over the adult’s financial and legal affairs as statutory property guardian?

Guardianship of adults is the last resort in BC and Representation Agreements were created as a legal alternative. Government’s explicit support of this principle and goal is essential, especially since Representation Agreements have built-in safeguards that other documents do not have.

A further problem with section 18 is that the definition of employee includes volunteers and contract staff as well as a person ‘ordinarily present.’ This means the restrictions will apply to many roles and could disqualify a large number of people – for no obvious reason.

The legislation also doesn’t specify location. As you will read in the examples on pages 3 and 4, a volunteer could be restricted from acting as a representative for someone who lives in a different town and even a completely different kind of facility.

Section 18 also restricts someone from acting as a representative for an adult who was formerly in care. It doesn’t say how this is monitored or enforced.

Not only are the restrictions impossible to accurately explain, they are also impractical to enforce. Given the aging population and limited tax dollars, government policies need to encourage and support help given by family and friends – not legislate the opposite.

Definitions in the CC&AL Act and Section 18

Types of licensed community care facilities:

- Community living agencies;
- Hospice residences and short-term palliative care services;
- Mental health and substance abuse residences;
- Acquired injury residences; and
- Residential or long term care facilities.

*A licensee is the individual or corporation (including a non-profit organization) who holds the license for the types of facilities listed above. A licensee and the following are restricted from acting as a representative: **

- Officer of the licensee;
- Director of the licensee;
- Agent of the licensee;
- Designate of the licensee; or
- Employee of the licensee.
 - > Includes a volunteer.
 - > Includes a person providing services under contract or a person ordinarily present at a community care facility OR at an assisted living residence - but does not include the person in care.

** Bill 16 (2016) introduces section 28.1, which applies to registered assisted living residences and is based on section 18. In the definitions above you can substitute ‘registrant’ for the term licensee and ‘resident’ for person in care and ‘former resident’ for person formerly in care.*

It is expected that a greater number of British Columbians will work and volunteer in the health and personal care industry due to increasing demands/needs. People may seek out these job opportunities due to personal experience with family or friends who have disabilities and/or who are aging. They should not be disqualified from acting as a representative only due to their association with an institution under the *CC&AL Act*.

The provisions also restrict those named in a Power of Attorney and Enduring Power of Attorney, as well as those acting as a personal representative (executor or administrator of an estate). However, restrictions on these positions have exceptions if the employee is the adult's spouse, child or parent. There are NO exceptions for Representation Agreements.

Section 18 of the *CC&AL Act* applies to LICENSED COMMUNITY CARE FACILITIES (as listed in the box on the preceding page).

Bill 16, introduced by the Minister of Health in March 2016 will add section 28.1 to the *CC&AL Act*. Section 28.1 is a mirror of section 18 with its restrictions applying to REGISTERED ASSISTED LIVING RESIDENCES. If this new section is put into effect, the problems discussed above will be compounded. See the examples on the following pages.

The intent of the *CC&AL Act* provisions is to address potential conflict of interest by those in real positions of power, such as owners and operators. The intent is lost by an approach that adds restriction on top of restriction. The legislation does not support or encourage self-determination. It can force law-abiding citizens into difficult situations by setting up well-intentioned efforts and people for inadvertent violations and mistakes.

As demonstrated by the examples in the next two pages and detailed discussion of the provisions and recommended changes in subsequent pages, the implications are significant for various parties, including care providers, taxpayers and adults who need assistance with issues affecting their basic quality-of-life.

OTHERS SHARE CONCERNS

We understand the **Canadian Bar Association BC Branch** provided feedback about problems with section 18, in 2004, when the Community Care and Assisted Living Act was first proclaimed.

In November 2016, Nidus provided the **Public Guardian and Trustee** with a written summary of our analysis and examples (similar to those on pages 3 and 4). We met to discuss the implications. The PGT supports the need for changes and expressed concern that making the details of this analysis public might discourage adults from planning, which would lead to greater problems.

HOW DOES THE PUBLIC LEARN ABOUT THIS?

Nidus has never seen public information by government about the *CC&AL Act* and section 18. It is not in the incapacity planning information by the Ministry of Attorney General or in the advance care planning information or My Voice booklet by the Ministry of Health. Yet, those affected by these laws and policies deserve and need to know the possible implications.

Are Representation Agreements being targeted?

The public and others ask if Representation Agreements are singled out for extra barriers.

These provisions in sections 18 and 28.1 of the *CC&AL Act* and the already narrowed restrictions on who may be named as a representative in a Representation Agreement Act that raise such questions and can lead to cynicism. It makes things especially difficult and stressful for representatives (caregivers/supporters).

EXAMPLES FOR SECTION 18 (Licensed Community Care Facility)

The examples provided below show that wording in section 18 of the CC&AL Act prevents people, who may be NAMED as representatives under the *Representation Agreement Act*, from ACTING as representatives for adults in (or formerly in) the community care system.

1.	Susan regularly visits her spouse, Aimee, who lives in the licensed Restful Long Term Care Facility.	
	<i>Can Susan be NAMED as a representative in her spouse’s Representation Agreement?</i>	YES
	<i>Can Susan ACT as a representative for her spouse? A licensee or employee of a licensee – which includes A PERSON ORDINARILY PRESENT (for example, a regular visitor) – can NOT ACT as a representative for a PERSON IN CARE.</i>	NO
2.	Tom is Executive Director of the licensed ABC Association for Community Living. His son, Robert, has a developmental disability and previously lived in a licensed group home . Robert is now living with a home share provider but as he ages, may need residential care in a facility.	
	<i>Can Tom be NAMED as a representative in his son’s Representation Agreement?</i>	YES
	<i>Can Tom ACT as a representative for his son? A licensee or employee/officer/designate of licensee can NOT ACT as a representative for a PERSON FORMERLY IN CARE (i.e. previous resident of a licensed group home).</i>	NO
3.	Azziz provides bookkeeping services under contract for the Ynot Assisted Living Residence. His brother has a mental illness and has needed care in a licensed mental health residence from time to time.	
	<i>Can Azziz be NAMED as a representative in his brother’s Representation Agreement?</i>	YES
	<i>Can Azziz ACT as a representative for his brother? Someone who is PROVIDING SERVICES UNDER CONTRACT (included in the definition of employee) FOR AN ASSISTED LIVING RESIDENCE can NOT ACT as a representative for a PERSON IN CARE OR FORMERLY IN CARE of any type of licensed community care facility.</i>	NO
4.	Mary is a volunteer at the licensed JL Hospice in Vancouver (she is a volunteer Director on the Board of Directors and also helps with some programs in the hospice facility). Her aunt, Ferron, has dementia and is living in the licensed Willow Long Term Care Facility in Creston .	
	<i>Can Mary be NAMED as a representative in her aunt’s Representation Agreement?</i>	YES
	<i>Can Mary ACT as a representative for her aunt? A licensee or employee of a licensee – which includes a volunteer - can NOT ACT as a representative for a PERSON IN CARE AT ANY TYPE OF LICENSED COMMUNITY CARE FACILITY AND FOR ANY LOCATION IN BC (not only where the person in care resides).</i>	NO

EXAMPLES FOR SECTION 28.1 (Registered Assisted Living Residences)

The examples provided below are based on Bill 16, which amends the CC&AL Act).

5.	Francis regularly visits his spouse, Sam, who lives in the registered No Worry Assisted Living Residence.	
	<i>Can Francis be NAMED as a representative in his spouse’s Representation Agreement?</i>	YES
	<i>Can Francis ACT as a representative for his spouse? An employee of a registrant – which includes A PERSON ORDINARILY PRESENT (for example, a regular visitor) – can NOT ACT as a representative for a RESIDENT.</i>	NO
6.	Michelle provides bookkeeping services under contract for the licensed ABC Association for Community Living. Her uncle is living in the registered Bubbly Brook Assisted Living Residence.	
	<i>Can Michelle be NAMED as a representative in her uncle’s Representation Agreement?</i>	YES
	<i>Can Michelle ACT as a representative for her uncle? Someone who is PROVIDING SERVICES UNDER CONTRACT (included in the definition of employee) FOR A LICENSED COMMUNITY CARE FACILITY can NOT ACT as a representative for a RESIDENT OR FORMER RESIDENT of a registered Assisted Living Residence.</i>	NO
7.	Mazi is on staff at the registered Sunny Greys Assisted Living Residence in Vancouver . Her parents (Nadir and Ashanti, are living in the registered Highland Assisted Living Residence in Creston (her mother has dementia).	
	<i>Can Mazi be NAMED as an alternate in her mother’s Representation Agreement?</i>	YES
	<i>Can Mazi be NAMED as a representative in her father’s Representation Agreement?</i>	YES
	<i>Can Mazi ACT as a representative for her father? An employee of a registrant can NOT ACT as a representative for a RESIDENT OF AN ASSISTED LIVING RESIDENCE AND IN ANY LOCATION IN BC (not only where the resident resides).</i>	NO
	<i>Can Mazi ACT as a representative for her mother, if her father is not able to act as the representative? What if her mother goes into residential care (a licensed care facility)? An employee of a registrant can NOT ACT as a representative for a RESIDENT OR FORMER RESIDENT OF AN ASSISTED LIVING RESIDENCE AND IN ANY LOCATION IN BC (not only where the resident resides).</i>	NO
	<i>Can Nadir ACT as a representative for Ashanti (his spouse)? A spouse who is also a resident can probably act as their spouse’s representative, but Bill 16 gives confusing messages. There is no exception in the CC&AL Act to allow a spouse to act as a representative named in a Representation Agreement. However, the definition of employee excludes a resident. Bill 16 introduces section 26.1(2), which provides for a spouse living in the assisted living residence to act on behalf of their spouse/resident who cannot manage their own affairs. It does not spell out the scope of the authority. The CC&AL Act cannot give legal authority for Nadir to act on behalf of Ashanti with Canada Revenue, for example. Therefore a legal authority will be needed to manage other finances—such as an Enduring Power of Attorney or a Representation Agreement section 7 that includes management of routine financial affairs.</i>	YES?