

# The Representation Agreement Act British Columbia

## The Right to Supported Decision Making in Canada

*Christine Gordon  
Board President, Nidus*

International Conference on Good Policies for Persons with Disabilities  
22-23 January 2012; Vienna, Austria

*Convened by*



In 2011, a Scientific Advisory Board to the World Future Council — consisting of eleven leading European experts from the disability rights movement, academia, human rights institutions and foundations — chose the Representation Agreement Act of British Columbia as the best policy in the world for recognizing the right to support in personal decision making and avoiding guardianship. B.C.'s policy is unique in its recognition of the capacity of all people to direct their lives.

The World Future Council acknowledged Nidus as the leading expert on the B.C. law and system, and as the organization which has been the main driver behind the creation of the Act. Nidus was asked to attend the International Summit on Accessibility in Vienna Austria, January 2012, to present on British Columbia's Representation Agreement Act – how it was developed and how it advances supported decision making.

# Presented by Nidus

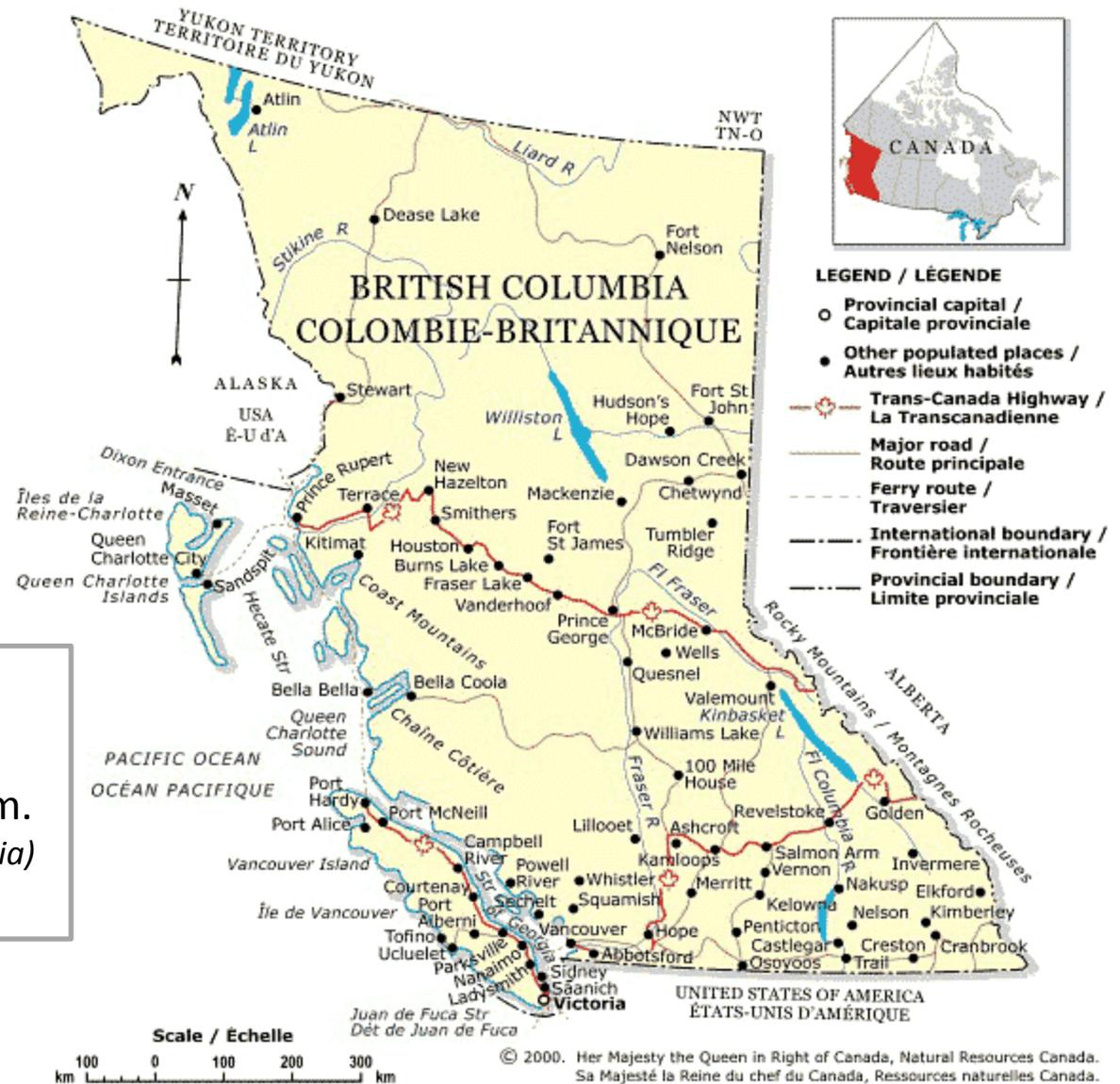
- ▶ Nidus is the Latin term for nest: a symbol of support, trust and self-development.
- ▶ Nidus is a non-governmental, charitable organization in British Columbia, Canada.
- ▶ Nidus was the driver for the Representation Agreement Act.
- ▶ Nidus has three main functions:
  1. Resource Centre – providing education and assistance.
  2. Registry service – offering a place to store information and documents so they are available when needed.
  3. Research – a living lab – identifying best practices and providing input to policy development.

# The Province of British Columbia



Canada is a country of 35 million people with the second largest land mass in the world, spanning over 9.9 million square kilometers. With 10 provinces and three territories, Canada is a federal state with Federal-Provincial Division of Powers. Property and civil rights are among the responsibilities of the provincial governments.

British Columbia is the western-most province. Population growth has been very recent: the population of the province has grown from under 1 million people in the 1950's to 4.5 million today. There have been numerous waves of immigration into British Columbia from many parts of the world, creating a very diverse society. Approximately 20% of the provincial population is of Asian origin (with approximately 30% in metropolitan Vancouver), while First Nations peoples make up 5% of the provincial population.



### **British Columbia**

- Population: 4.5 million
- Area: 945 million square km.  
(approx. = France+Germany+Austria)
- GDP (per capita): € 34,500

British Columbia joined the Confederation in 1871 to become the 6<sup>th</sup> province in Canada. It is bounded by the Rocky Mountains on the east, the United States to the south and the Yukon and Northwest Territories to the north. The American state of Alaska is British Columbia's neighbour to the north-west.

The population of the province is concentrated in the southern coastal region, which includes Metropolitan Vancouver where over half (2.4 million) of the province's population lives. The economy of this region is based on transportation (as the primary western trans-shipment terminus for Canadian exports), tourism, and finance. While the west coast has a temperate climate and large areas of rain forest, the interior of the province is very mountainous (there are three major mountain chains running in a north-south direction) and has a harsh climate that includes desert regions in the south-central part of the province. The economy of the interior is based on mining and forestry. The northern part of the province has primarily been populated by small scattered First Nations settlements, but recent discoveries of coal and natural gas in the north-east have provided the basis for expanding resource towns.

# Creating the Representation Agreement Act

- ▶ Successes of B.C.'s Law Reform
- ▶ Strategies for Success of Law Reform
- ▶ Weaknesses of the Law Reform
- ▶ Impact of the Representation Agreement Act
- ▶ Lessons Learned

*This presentation applies the template of the 'just law-making methodology.' This methodology was developed and is used by the World Future Council to provide a practical tool for policy makers to assist with designing, evaluating and amending legislation.*

Supported decision making is different from substitute decision making. Substitute decision making is when someone takes the place of an individual who is determined incapable of managing their affairs or making decisions. The substitute decision maker acts on behalf of and in the best interests of the individual. This is the approach reflected in Power of Attorney legislation and health care proxy decision making.

Supported decision making is not just support with decision making. It is a process of supporting and celebrating the individual's capability and identity — their personhood. The Representation Agreement Act was created to provide an alternative to adult guardianship. Under adult guardianship procedures, if an individual is declared incompetent/incapable, they are legally a non-person.

The Representation Agreement Act was created from a philosophy that views people as capable even if they cannot manage their own affairs or give informed consent. A representative(s) is always listening to the individual's communication (all forms of communication are recognized) to enable them to participate in decision making. A representative not only preserve's an individual's self-determination, they strive to enhance it. A representative does not take the place of the individual, they act as a bridge to help third parties get to know and interact with the individual, which in turn provides opportunity for the individual to demonstrate and develop new capacities.

# Successes

- ▶ **Sustainability:** Validates and enables existing social networks and encourages their formation.

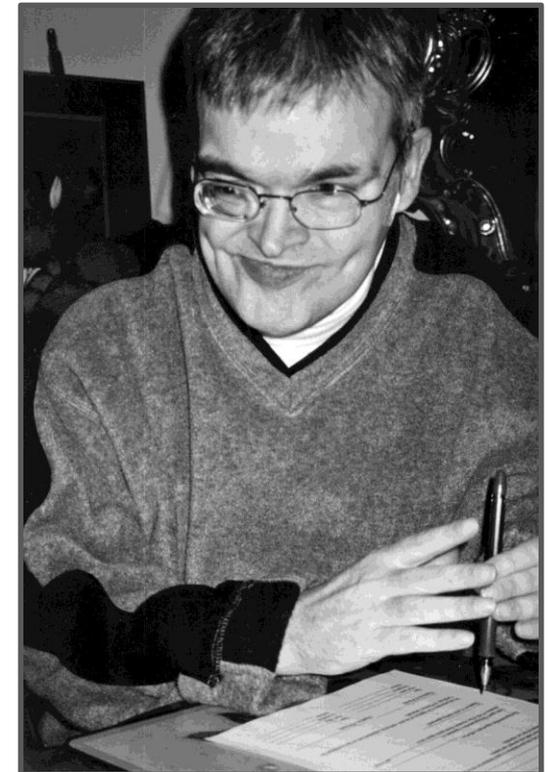


The Representation Agreement Act was one of four statutes passed in the legislature of British Columbia in 1993 as part of the Adult Guardianship Law reform process. The other three Acts were the Health Care Consent and Care Facility Admission Act, the Adult Guardianship Act and the Public Guardian and Trustee Act. The three other statutes have been only partially proclaimed due to the estimated high cost for their full implementation.

The vision of the Representation Agreement was strongly influenced by the work of John McKnight and his idea of regenerating community by activating natural social networks and empowering them to act independently of professional experts or formal advocates. The Representation Agreement was conceived as an economically sustainable way to provide assistance with decision making because of its reliance on legally empowered informal social networks.

# Successes

- ▶ **Equity:** Works at the roots of the problem of inclusion by severing the association between incapability and unworthiness and confers the right of self determination to everyone.



## **The Unworthiness Equation**

Intellectual and physical limitations = Incapacity = *unproductive/not responsible/irresponsible immoral* = Unworthy

*“The intellectual and physical limitation equals incapacity and incapacity leads people to conclude or assume that you’re unproductive, you’re not responsible, you’re immoral. And then what happens is there’s another equation in people’s minds that these things equal unworthy. For most of my life, one way or the other I thought that what one needed to do was to go around and tell people that people really are worthy. Then I came across a quote from one of my favourite urban philosophers, Thoreau, and he said for every thousand people hacking at the leaves of change, there’s one person working at the roots. .. So that’s led me to say that I can no longer waste my time going out there and convincing people who think that people are unworthy that they really are worthy. What I need is to focus on this issue here this equation between intellectual and physical limitation and incapacity... the only place where we have a ray of hope, a ray of sunshine that we might be able to do something is in the Representation Agreement.”*

Al Etmanski: Presentation to the Advocacy and Adult Guardianship Conference, Vancouver, BC. January 1995

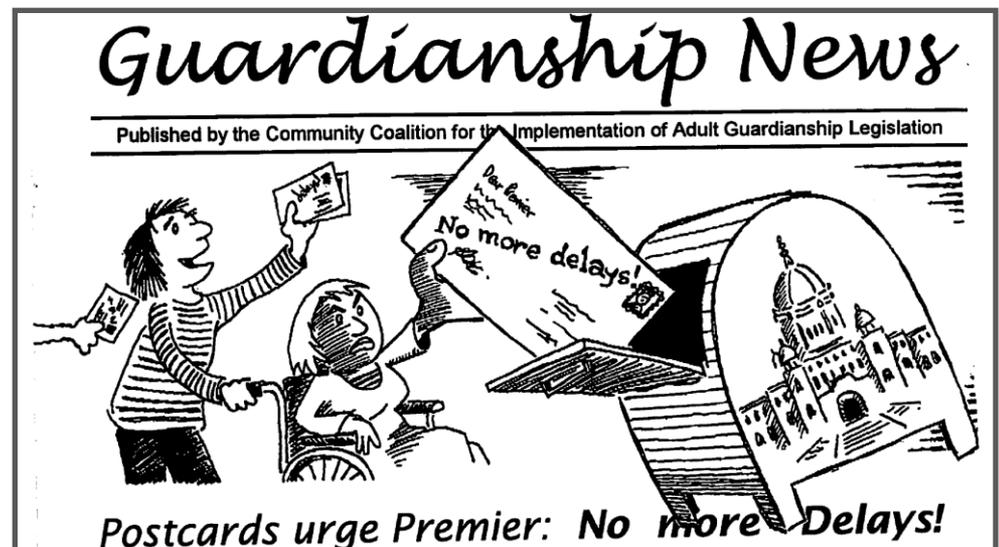
*“In an interdependent world, what does self-determination mean? I think it is best defined using what Michael Bach of the Roeher Institute has called the status and recognition approach. The choices that we make to pursue our vision for our lives, or our self-determination, needs to be (and here I will quote Michael Bach) ‘fuelled by the recognition that others grant us that we are valued, that we are loved, that we do have a purpose and that our being matters.’*

*This recognition has to be accompanied by the control, the resources and the supports (in other words the status) to make decisions consistent with our purposes. Why is the status and recognition of self-determination so central to inclusion - because it prevents the objectification that leads people with disabilities to be considered either as a homogeneous group or as categories of functional limitation. Objectification not only has disastrous consequences for the human spirit, it produces bad and unworkable policies.”*

Christine Gordon: Presentation to the Inclusion by Design Conference,  
Montreal, Quebec, 2001

# Successes

- ▶ **Preventative approach:** Recognizes the importance of decision making as a determinant of health and keeps the door open to advancing knowledge and understanding of capability.
- ▶ **Participation:** “A people’s bill with government’s co-operation.” *Val Anderson, MLA British Columbia.*

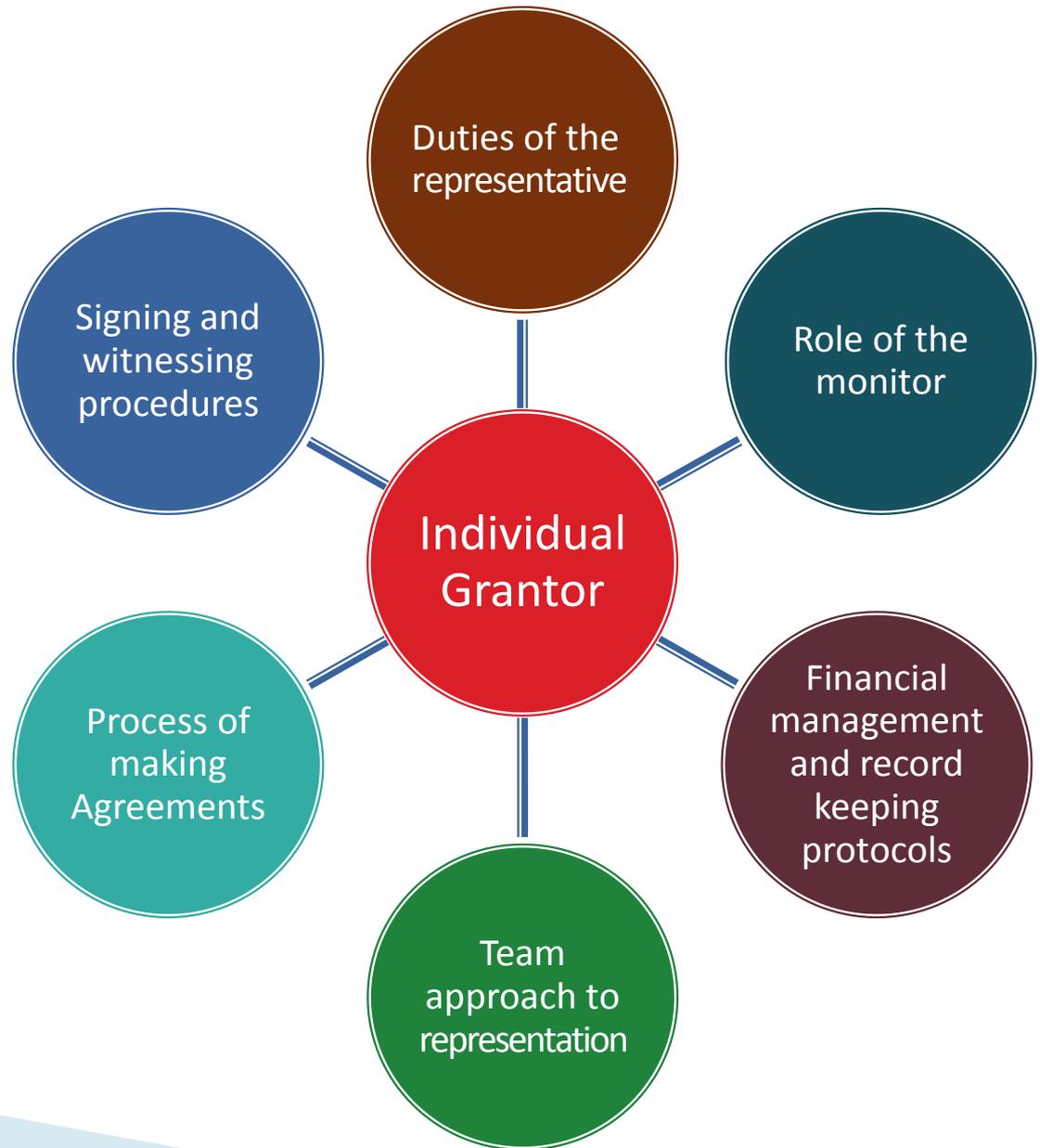


During the reform of the Adult Guardianship laws in British Columbia, an Interdisciplinary Committee on Incapability met for three years under the auspices of the Public Trustee. The Committee concluded that there is no reliable test for incapability, instead only a process that with enough time and consultation may indicate incapability. Given these conclusions, the Representation Agreement Act was developed without a front end test of incapability and rests upon the assumption of capability. In the case of challenge, assessors must take into account the many ways of knowing, of which only a few examples are given in the legislation. This anticipates advancing research and understanding of multiple intelligences.

“If we have a system that people support, we will have a system that supports people” Colin Gabelmann, Attorney General of British Columbia, June 23, 1994. The Attorney General who shepherded the law reform process in British Columbia was (unusually for the position) not a lawyer and he gave his approval for an unprecedented law reform process that engaged thousands of people across the province in developing the vision and drafting the laws.

# Successes

- ▶ **Governance:**  
Legislates an ethical decision making framework for supported decision making.



The Representation Agreement is a paper hub of an ethical decision making framework. The representative keeps the focus clearly on the individual desires, beliefs and values out of recognition of the fact that self determination is every person's reason for being and consequently the guiding principle of the statute.

The representative is buttressed by a set of duties, the presence of others and the protocol for making and signing Agreements.

The role of the monitor, as a safeguard and support to the adult, has been evolving in practice since the legislation was drafted. The involvement of the monitor is a function of the relationship between the representative and the grantor and the nature of the authorities that are given.

The Representation Agreement Section 7 can cover all life areas. The standard powers are minor and major health care, personal care, legal affairs and routine management of financial affairs. If finances are included, an extra safeguard is required. This safeguard can be met by naming a monitor or at least two representatives to act jointly for finances. (The extra safeguard requirement is waived if the representative is the grantor's spouse.)

In Nidus' research on the use of Representation Agreements with standard powers, the majority of grantors choose to include a monitor in their Agreements. The regulation that defines routine financial management reflects the wide variety of transactions that can reasonably be considered as routine. (Dealing with real estate property and other Land Title transactions are excluded from routine management.)

# Successes

- ▶ **Integration and Inter-relationship:** Acts as the lynchpin for inclusion by providing both recognition (capability) and status (the legal Agreement), which enables use of other policies aimed at self determination, wealth creation, and individualized funding as well as the prevention of abuse/neglect.

Individualized funding and the Registered Disability Savings Plan (RDSP) were ideas germinated in British Columbia. Representation Agreements are key tools for the legal construction of these programs.

The prevention of abuse and neglect and personal safety are highly dependent upon social networks. While some of the early critics of the Representation Agreement's supported decision making provisions were professionals campaigning against elder abuse, it has become a useful tool for many professionals who are seeking practical ways to create trusted support networks for seniors who are at risk.

# Successes

- ▶ **United by shared values:**  
Recognizes a regional culture of self reliance;  
relieves the public of onerous legal costs and places the burden of proof of incapability on stronger parties like the Public Guardian and Trustee.



British Columbia's culture was forged from its differentiated and sometimes forbidding geography that required adapting to particular environments and unique resources. Each region of the province fiercely guards its own identity but what unites them all is antipathy to invasive government. The principle of reducing public guardianship was received enthusiastically during both the law reform and the implementation process because British Columbians generally don't want government involved in their private life.

The inter-dependent decision making sanctioned by the Representation Agreement was particularly popular because "it recognizes the way in which most adults function in their everyday lives." (R. Gordon, The Emergence of Assisted {Supported} Decision - Making in the Canadian Law of Adult Guardianship and Substitute Decision-Making, International Journal of Law and Psychiatry, Vol. 23, No.1 p.65)

Representation Agreements prevent the use of a costly court process which can be prohibitive for many British Columbians, especially people with disabilities who are still amongst the poorest people in the province.

The Representation Agreement Act's presumption of capability, coupled with its proviso that the method of communication is not a factor in capability, moves the burden of proof to the challenger, usually the Office of the Public Guardian and Trustee.

# Strategies for Success

- ▶ Building a values based, diverse coalition that could endure for 20 years.
- ▶ Focusing on the innovative and the sustainable elements of change.

*agreements*  
News from the  
Representation  
Agreement  
Resource Centre  
FALL 2001

**NOW!**



The Representation Agreement was developed and drafted by the Project to Review Adult Guardianship (PRAG 1989-1993) which was founded by the Alzheimer Society of BC, the BC Association for Community Living, the BC Coalition of People with Disabilities and the Community Legal Assistance Society and funded by the Law Foundation of British Columbia.

PRAG undertook to involve a broad cross section of the community including legal and health professionals, hospitals and care facilities, self advocacy groups and seniors in envisioning the law reform process. The outcome of these province wide discussions was a paper called *How Can We Help* which laid out the principles and the framework for the four adult guardianship statutes. In collaboration with the Office of the Public Trustee, PRAG coordinated the community's participation in directly drafting the legislation.

PRAG was succeeded by the Community Coalition for the Implementation of Adult Guardianship Legislation (1993 – ongoing), which was comprised of the community groups that had been involved with PRAG.

The Community Coalition spearheaded the implementation process by participating in joint working groups with government for all of the statutes, except for the Representation Agreement Task Force, which was always managed directly by the Community Coalition.

As soon as the legislation was passed in 1993, the Community Coalition made a strategic decision to take charge of the implementation of the Representation Agreement Act.

# Strategies for Success

- ▶ Recognizing what we did not have the power to influence and deliberately choosing not to act.
- ▶ Keeping the new vision of capability alive through the legislative and implementation process.

## A new vision of capability

*The new law reflects both the best thinking and the best practice about capability*

Since the idea of Representation Agreements was first discussed over ten years ago, people have been devoted to examining what it means to be capable of decision-making. They recognized that being capable of making a decision depends upon a number of factors including the kind of decision being made, the nature of the support that is available to the individual who is making the decision and the various ways that people can demonstrate choices and preferences.

A broad community coalition, called the Project to Review Adult Guardianship, which included professionals like the Bar Association and the BC Medical Association as well as community groups like the BC Association for Community Living and the Alzheimer Society, agreed with government that the law should reflect this new vision of capability.

A Representation Agreement begins with the time-honoured common law assumption that everyone is capable. It acknowledges that decision-making of any importance is an interdependent not an independent activity by incorporating supported decision making into the Representation Agreement. It recognizes that the way a person communicates is not a factor in determining capability, and it sets out some broader criteria for assessing incapability if a Rep-

resentation Agreement with standard powers is challenged on the grounds that the maker was incapable.

The practical effect of these provisions is that a person can make a Representation Agreement with standard powers even if they cannot manage their personal affairs or make a traditional contract. It has been said that these provisions lower the “threshold of capability.” What the Act really does is to raise the bar



**A person can make a Representation Agreement with standard powers even if they cannot manage their personal affairs**

for professional, judicial and community practice.

A stereotypical view, a checklist test for capability or a brief conversation will no longer suffice. Instead, all of the ways of knowing will have to be considered if someone is alleged to be incapable. This is in keeping with the fact that a judgement of incapability is usually irrevocable and leads to a loss of civil and human rights.

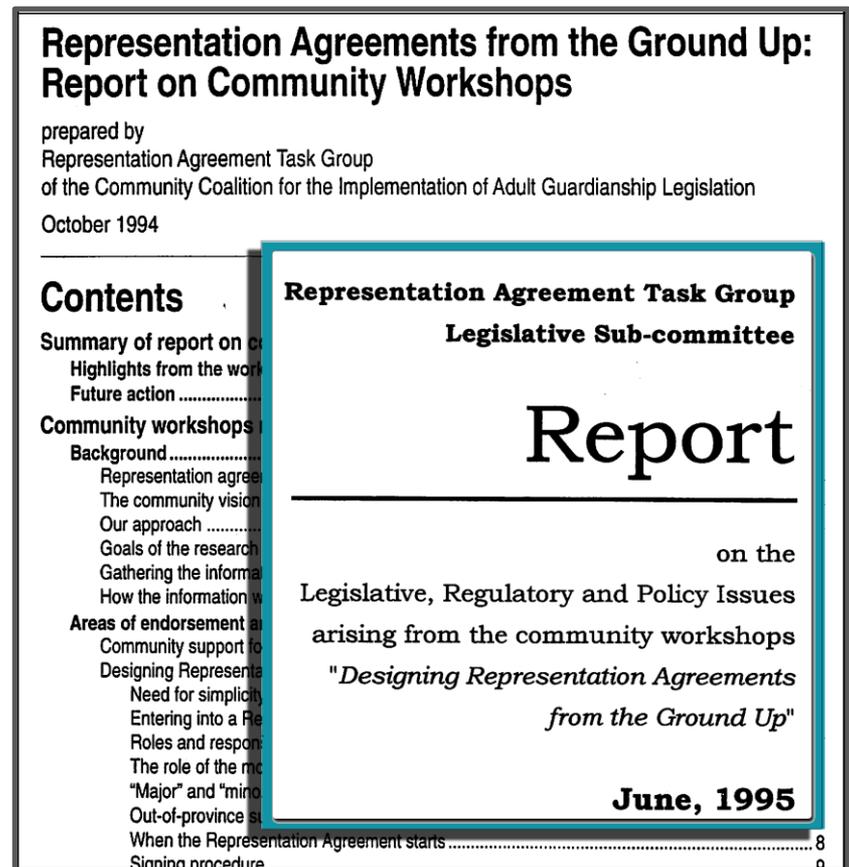
The Representation Agreement with standard powers is primary prevention against unnecessary loss of these precious rights by compelling all of us to realize that the demonstration of capability is as diverse as the uniqueness of the identity of each individual and of their life situation.

The Community Coalition had to make some hard choices during the implementation process. The community's resources were limited and the demands of fully participating in implementing four statutes were overwhelming. The decision was made to focus on the Representation Agreement because it was "the jewel in the crown" of the legislative package and carried the most promise to prevent public guardianship in a way that citizens themselves could control. The Coalition did not completely let go of involvement in the implementation of the other pieces of the legislation; for example participatory action research was used to inform the development of the abuse/neglect provisions of the Adult Guardianship Act and popular education was applied to the Health Care Consent and Care Facility Admission Act, most of the resources and the energy were dedicated to a ground up process of implementing the Representation Agreement Act. This decision was made by considering where the most power could be levered.

A major part of the Coalition's communication strategy was the focus on the new vision of capability. This was the message that was most popular with the members of the Coalition and became the anthem of the long and grueling period of implementation (1993 - 2000).

# Strategies for Success

- ▶ Using a ground-up process in the development of policy and regulations and implementation.



The Community Coalition chose a thoughtful and deliberate ground-up process for developing the Representation Agreement Act. The Representation Agreement Task Group (RATG) hit the ground running as soon as the legislation had passed in the British Columbia legislature, fanning out across the province to do community workshops on what would make Representation Agreements work in practice. The Task Group worked with an independent researcher to analyze the results of the workshops and produced a report in October 1994, before most of the other government implementation groups had even begun their work.

The RATG report was widely publicized through the Coalition's networks and through a provincial conference, where a decision was made to empower an RATG Legislative Sub-committee to recommend amendments, regulations and policy that would reflect the Ground-up Report. These two reports anchored all of the subsequent discussions, negotiations and decisions that were made about how to bring the Representation Agreement into effect. One of the Task Force members once attempted to put a price on the volunteer work that was contributed to this effort and came up with a nice round number of \$500,000(C). Joanne Taylor, who chaired the RATG from its inception, went on to become the Executive Director of the Representation Agreement Resource Centre (now Nidus).

# Strategies for Success

- ▶ Negotiating points of compromise in order to get the legislation put into effect.



The most challenging work for the Community Coalition was negotiating points of compromise in order to put the Representation Agreement into effect. Critical negotiation points were reached in 1999, 2002 and 2006 with many smaller negotiating challenges in between.

Each critical impasse brought much soul searching and sometimes threatened to fracture the Coalition but the process was always anchored by a deep understanding and commitment to the principles of the law reform, excellent research and preparation, a clear eyed analysis of the bottom line and a dedication to a common message.

The bottom line was no compromise on the new vision of capability and supported decision making, which was the most controversial part of the Representation Agreement Act. Many other compromises were made in order to keep this revolutionary part of the legislation intact.

# Strategies for Success

- ▶ Creating a resource centre that could establish best practice in uncharted territory.

Guardianship News • Summer 1999



Representation  
Agreement  
Resource Centre

## Representation Agreement Resource Centre

### Keeping the Faith

The Representation Agreement Resource Centre is a non-profit charitable society created by the organizations and individuals who have been part of the Community Coalition for the Implementation of Adult Guardianship Legislation. The Centre's purpose is to keep the faith of the work that was undertaken by the Representation Agreement Task Group who used action research and community development to promote implementation of representation agreements from the ground-up. During four years of work, the Task Group learned that citizens of the Province are committed to personal decision-making that remains within the network of

trusted family and friends, and they want to ensure this by using representation agreements that are affordable, accessible and simple to make. The Representation Agreement Resource Centre intends to honour this commitment and respond to this need.

Since its opening in 1998, the Centre has co-ordinated information and public education as well as provided volunteer-based assistance in making or using representation agreements. The Resource Centre is richly endowed with the publications produced by the Representation Agreement Task Group (including the popular *Walking Through a Representa-*

*tion Agreement* and the *Guidebook to Helping Others Make Representation Agreements*). There are also a variety of "sample" representation agreements that have been made by people over the last four years. Volunteer members of the Centre regularly give workshops to community groups and assistance to individuals.

With the Representation Agreement Act coming into force on February 28, 2000, the Centre will be updating its publications, and redoubling its efforts to inform as many people as possible about the value of representation agreements.

To get in touch with the Representation Agreement Resource Centre, call (604) 875-0188, send a fax to (604) 875-9227 or write c/o 204 - 456 West Broadway, Vancouver, B.C. V5Y 1R3. □



**A representation agreement is a way to choose a Representative who will help you make decisions if you need assistance. Your Representative can assist you now or in the future.**

#### About this newsletter

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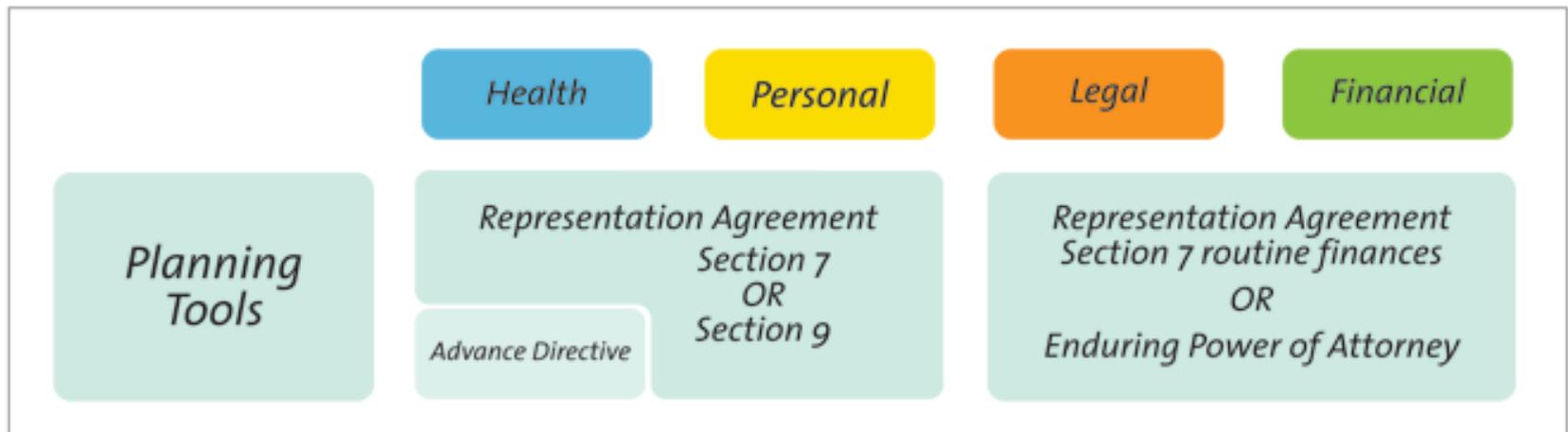
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The Representation Agreement Resource Centre (RARC) was created in 1995 by the Community Coalition. Although the Representation Agreement Act was not proclaimed until 2000, the Coalition realized that developing best practice in the uncharted territory of supported decision making would be essential to its success.

Up to 2000, RARC had no staff and has never had core funding from any government Ministry or community foundation. Despite this, RARC / Nidus has become the centre of excellence in supported decision making, thanks in large part to the skills and commitment of the staff (1 to 1.3 to 2) and summer students, who along with community volunteers have listened, educated and advised on how to make Representation Agreements work for all British Columbians.

# Weaknesses

- ▶ There is no single planning tool. This results in complexity and public confusion.



The original vision of the Project to Review Adult Guardianship in *How Can We Help* was to produce one comprehensive planning and supported decision making tool in British Columbia. However the political realities that have presented themselves since 1992 have led to a series of reversals to this original vision.

- In 1993, government trepidation about the new vision of capability led to the creation of the standard (Section 7) Agreements and the enhanced (Section 9) Agreements in 11<sup>th</sup> hour negotiations that enabled the Representation Agreement Act to go to the legislature.
- In 2002, concerns from the legal profession led to the retention of the Enduring Power of Attorney under the Power of Attorney Act – for legal and financial powers, when they involve real property and business affairs.
- In 2006, the lobbying of health care providers lead to the introduction of instructions-only advance directive legislation.

The net effect of all these changes has been to introduce more planning tools in British Columbia than exist in most other jurisdictions. This has increased the burden on Nidus' public education work and has created a steep learning curve for everyone.

# Weaknesses

- ▶ Failure to repeal the Patients Property Act and implement the 1993 reforms to the court and public guardianship process and the Care Facility Admission legislation leaves the Representation Agreement without compatible companion legislation and policies.



## Bob's Story

Bob is a 74 year old man under adult guardianship in British Columbia. This means the Public Guardian and Trustee manages Bob's financial and legal affairs. Bob would like to manage his own financial and legal affairs. This is his story.

Although the Representation Agreement Act was the jewel in the crown of the adult guardianship law reform process, it was nestled in companion legislation that shared the following principles:

1. All adults have the right to autonomy and self determination and the right to enjoy the fundamental freedoms prescribed in the Canadian Charter of Rights and Freedoms.
2. All adults are entitled to receive the most effective but the least restrictive, least intrusive and least stigmatizing form of assistance and support or protection when they are unable to act independently, or inter-dependently to care for themselves or for their property and financial affairs, particularly where there is a risk of abuse or neglect.
3. All adults are entitled to the legal presumption that they are capable of making decisions and, where necessary, to support and assistance in order to understand and make informed decisions on their behalf.

4. The use of court procedures and court orders appointing decision makers or guardians for adults should occur only as an absolute last resort and only after alternatives such as the provision of supports and assistance have been either attempted or carefully considered. [Public guardianship was eliminated in the proposed Adult Guardianship Act of 1993.]
5. All procedures, protocols and other processes associated with the provision of support, assistance or protection shall be intellectually, psychologically, physically, culturally and financially accessible to adults.

Without all of the companion legislation, these principles are not being applied leaving the Representation Agreement as primary prevention, but trapping people like Bob in the unfairness of the old modes of guardianship. 1993 reforms set out to abolish public guardianship and limit court-ordered guardianship by time and/or task. [Current amendments, waiting to be proclaimed, do not include these reforms.]

# Weaknesses

- ▶ Public education role as solely a community responsibility.



**Nidus** Personal Planning  
Resource Centre and Registry

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### Nidus and Personal Planning

The Nidus Personal Planning Resource Centre is a non-profit, charitable organization. Nidus provides information to British Columbians about personal planning. We also operate a centralized Registry for personal planning documents.

Personal planning is about making legal arrangements in the event you need assistance managing your affairs due to illness, injury or disability. Personal planning can address a variety of situations and needs.

Amendments to personal planning legislation are in effect September 1, 2011. Nidus is celebrating with a special interactive website. Please click to join us at [niduspersonalplanning.tumblr.com](http://niduspersonalplanning.tumblr.com)



**My mom is my legal representative**

In British Columbia, personal planning is for all adults, based on their need for support not their competence. This is important for my son, who does not speak. As his legal representative I can help him be his own person and protect his rights. This provides an alternative to adult guardianship which would remove his rights and declare him a non-person.



**I'm not waiting for a crisis**

Through personal planning you can make your own legally enforceable arrangements with those you trust. This prevents the government or others you would not want from becoming involved in your personal and private affairs. Personal planning lets you stay in control.



**It's about dignity and respect**

Personal planning gives us peace of mind. As a caregiver, my main concern is to ensure quality-of-life to the end-of-life at home or in a facility. And if something happens to me, I need to know someone else can carry on with no disruption in care for my loved one.

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**HIGHLIGHTS**

- What's New?
- RA Fact Sheet
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- Determine Your Path

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The duty of public education about Representation Agreements and supported decision making since the passage of the Representation Agreement Act in 1993 has fallen in great measure onto the Representation Agreement Resource Centre / Nidus.

Nidus has received funding for specific education projects from community foundations like the Notary Foundation, the Law Foundation and the Vancouver Foundation and some federal government program grants. Nidus has established a close working and funding relationship with Community Living BC, a crown corporation that provides services to adults with developmental disabilities. However, core funding from any of these sources has proved to be elusive.

Although Nidus is happy to play a leadership role in public education, it has been difficult to do so without the full partnership of government.

# Weaknesses

- ▶ Linkages between the development of the Representation Agreement and the development of an advocacy network were never realized.
- ▶ Instituting a Mental Health Act override means failure to respect the insight of consumers of mental health services.



## Mark's Story

Mark has a mood disorder and when he is manic he does not realize he needs help. He cannot get treatment until he becomes a danger to himself or others. By this time Mark is in debt, has lost his job, and has to start over.

It was Mark's psychiatrist who told him about Representation Agreements. Mark decided to make a Ulysses type Representation Agreement that authorizes his personal supporters to intervene at the early signs of his illness. They can help Mark get treatment and protect his affairs.

The Representation Agreement Act empowers informal support networks to be advocates for grantors of Agreements.

At a provincial conference on Advocacy and Adult Guardianship in 1995, there were recommendations made to build an advocacy network across the province so that representatives could be supported to learn how to become good advocates. The advocacy network has not developed in parallel with the use of the Representation Agreement, largely due to the difficulties in securing funding and ongoing coordination for the network. This leaves many representatives without the resources they need to be effective as advocates.

Consumers of mental health services were deeply involved in the development of *How Can We Help* and the four adult guardianship statutes that evolved from this process. They began experimenting with Ulysses Agreements before the legislation was even drafted. The Representation Agreement was proving to be a good fit for their purposes. They could grant specific binding authority and instructions to a trusted representative based on experience and insight with their illness. They can make the Agreement when well to set out the care and treatment they want to receive during episodes of illness and for which they might refuse consent at the time, due to the nature of their mental illness.

On the eve of the introduction of the Adult Guardianship statutes into the British Columbia Legislature, the government decided to put a Mental Health Act override on all of the statutes. This meant that committal under the Mental Health Act could override the principles and processes of the new laws including the Representation Agreement. Consumers of mental health services were deeply disappointed and endeavored to convince successive governments that the override should be lifted for the Representation Agreement. They have not yet succeeded in convincing government to do this.

# Impact of the Representation Agreement Act

- ▶ Raised the bar for professional and judicial practice around the issues of capability (for example: communication is not a factor, other competencies are relevant).
- ▶ Improved the ethical decision making practices for the Enduring Power of Attorney.

The new vision of capability in the Representation Agreement places a duty on legal professionals to modify their traditional practice when considering capability.

During the implementation period, some strenuous efforts were made by legal associations to drop the provisions on communication and some of the examples of capability from the legislation, primarily because they were so unfamiliar to them and seemed impossible to apply. However, their continued inclusion in the legislation has compelled legal practitioners to develop new ways to understand how their clients demonstrate capability and to respect non traditional modes of communication.

This brings professional practice to a higher level of sensitivity for human rights, awareness of disability and compels practitioners to engage in a process of understanding rather than applying arbitrary and unreliable tests.

In 2001, at the request of the Attorney General of the day, the Representation Agreement was reviewed by one of British Columbia's most prominent legal scholars.

The reviewer came with an open mind and spent considerable time listening to members of the community about their vision for the legislation. Although he was cautious about supported decision making, the reviewer was impressed with the thought that had gone into creating the Representation Agreement, especially the ethical decision making framework.

He recommended to the Attorney General that supported decision making and the new vision of capability should remain in the legislation and that the Enduring Power of Attorney could remain as long as it was reformed to include many of the decision-making safeguards of the Representation Agreement Act. These reforms to the Enduring Power of Attorney were put into effect in September 2011.

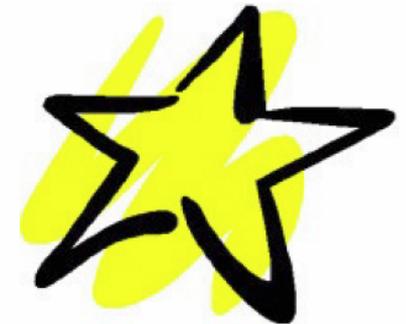
# Impact of the Representation Agreement Act

- ▶ Enabled the implementation of new programs (Registered Disability Savings Plan, individualized funding).

## **Representation Agreements added to CSIL Policy**

As of April 1, 2011 having a representative, who is named in your Representation Agreement, is a new option in the eligibility criteria for the Choice in Supports for Independent Living (CSIL) Program.

**CSIL** is a self-managed model of care where eligible individuals with disabilities and high intensity care needs are funded directly to hire workers to provide home support services. If an individual is not able to act as the employer and manage other program requirements, he or she may make a Representation Agreement to give a representative this legal authority.



The passage of the Representation Agreement Act in 1993 was soon followed by the introduction in British Columbia of an individualized funding program for personal support. The Choices in Supports for Independent Living (CSIL) Program is available for those who can manage their care independently and for those who need assistance to manage their care. Each CSIL recipient must sign a contract with a local health authority in order to be eligible for the program. The Representation Agreement was informally piloted as a method to enable those who could not manage independently to still be eligible for CSIL and their use has now been formally incorporated into Ministry of Health policy . Similarly, individualized funding programs that are delivered by Community Living BC for adults with developmental disabilities also use the Representation Agreement as a legal underpinning. This means that the benefits of individualized funding are available to a much wider group of people with disabilities.

The Registered Disability Savings Plan (RDSP) is a new financial tool that enables people with disabilities and their supporters to make contributions to a tax free savings plan that is enhanced by an annual government contribution. Although the RDSP is available to all Canadians with disabilities, only British Columbians have the assurance, through the Representation Agreement, that they can create an RDSP even if they cannot manage their financial affairs independently.

# Impact of the Representation Agreement Act

- ▶ Demonstrated the effect of positive, proactive communication in human relationships through, for example, an emphasis on the process of making Agreements, and the role of the monitor.



As it engaged in the ground-up process of implementing the legislation in 1993, the Representation Agreement Task Group realized that the most important element for success was the process of making an Agreement, especially the quality of the communication between the grantors and the representatives. This has been a major focus of RARC/Nidus ever since.

Every initiative that Nidus undertakes is dedicated to assisting people to work hard to communicate with each other about what they believe and value and to endeavor to incorporate this into both the legal Agreement and the use of the Agreement. Positive communication, which can be facilitated by a monitor, is having an impact on the quality and effectiveness of Representation Agreements.

# Impact of the Representation Agreement Act

- ▶ Defined and modeled the role of the representative as distinct and different from other legal roles (for example: advocate, attorney, guardian, parent).

*"I'm your human  
tape recorder."  
(Heather Morrison)*



Representatives do not act in the best interests of an adult except as an absolute last resort. Instead they ensure the adult's voice is transmitted.

As one representative, who was supporting a friend who was dying, put it, "I'm your human tape recorder". This is very different from traditional best interest roles like a guardian or parent and it takes conscious effort to get it right.

The duties of a representative are explicitly laid out on the form that representatives must sign and they are a major topic of the education that Nidus does. The representative is a messenger of self determination and the duties are the lynchpin for authentic supported decision making.

# Impact of the Representation Agreement Act

- ▶ Enabled effective use of Section 7 Agreements by elders as well as people with disabilities.



Elders are the fastest growing segment of the population and they are adopting standard Section 7 Agreements with enthusiasm. Many are choosing standard Agreements as they plan for the future while others are employing them after the onset of the debilitating effects of aging.

The Alzheimer Society of BC was a founding member of PRAG and its successor the Community Coalition for the Implementation of Adult Guardianship Legislation. The Alzheimer Society, along with a wide array of seniors organizations, continue to be strong partners in the work of Nidus.

The Nidus office has been located in a multi-purpose seniors centre since 2001 and this has enhanced the profile of Representation Agreements for this community. Elders have become workshop leaders and popular educators and they have been stalwart in their defense of the new vision of capability. This goes a long way to convincing reluctant politicians who are very aware that seniors vote.

# Impact of the Representation Agreement Act

- ▶ Proved through practice that supported decision making does not engender/enable abuse.

Despite concerns throughout the drafting of the law and its implementation that supported decision making would engender abuse, after more than 10 years of practice with the Representation Agreement these initial fears have not come true.

There are many reasons why the practice has been so positive including the careful thought that was given to the ethical decision making framework and the excellent education that has been provided by Nidus.

However, one important factor has been the way in which the legislation was drafted. It was conceived as a way to enable people to help each other, arising from the belief that most of the time people try to do right by one another. Many laws build in mouse traps at the front end to catch the “bad guys” but the Representation Agreement Act does not take a mouse trap approach. There are few front end barriers, lots of attention paid to duties and provisions for challenge at the back end. This demonstrates confidence in people’s desire and ability to help each other and this confidence is reciprocated by the people who make and use Agreements in the honest and open ways in which they behave. The principle of self fulfilling prophecy is at work.

# Lessons learned

- ▶ Don't create laws for one section of the population (for example: people with developmental disabilities, mental health consumers). Instead create laws that work for all.
- ▶ Strategic political compromise is necessary in order to move from an ideal policy to a real one.

**A Message from  
the Honourable Michael de Jong, Q.C.  
Attorney General**

Greetings to Nidus as you commemorate the 10th anniversary of the implementation of the *Representation Agreement Act*.



I commend your organization for acknowledging the value of Representation Agreements and for the leadership you have demonstrated in assisting British Columbians with personal planning in communities across the province.

Congratulations and I wish you continued success in your endeavours.

Yours truly,  
Honourable Michael de Jong, Q.C.  
Attorney General and Government House Leader

There were many points during the seeming wilderness period of the implementation of the Representation Agreement Act when offers were made by authorities to put the law into effect immediately if the Section 7 provisions were limited to one group of people, specifically people with developmental disabilities. There were precedents for this in other jurisdictions where laws had been carved out with one group of the population in mind. These offers were consistently refused by the Community Coalition and the implementation period dragged on.

The determination to keep the Representation Agreement as inclusive as possible came from the diversity of the Coalition that had created it and from the conviction that supported decision making would quickly become an artifact if it was designed only for some and not for all. A new form of discrimination would be at play and the value of interdependent decision making as a natural human way of living would be denied.

Despite the hardship that the long delays brought, the decision to keep Section 7 standard Agreements inclusive was the right one.

# Lessons learned

- ▶ The implementation of new laws is just as important as their development.

*“The task is not 50% done but at most 25% accomplished and the main task is ahead of us”*

*Val Anderson, Member of the Legislative Assembly of British Columbia,  
Speech to the legislature on event of the proclamation of the  
Representation Agreement Act, 1999*

It takes a lot of energy, organizational skill, consensus and coalition building, idea generation, analysis, communication and commitment to design and draft new laws. It takes at least double all of this to implement new laws, especially when the goal is to make a fundamental change.

Resistance to change stiffens during the period when laws are implemented and the balance of power decidedly shifts from the people most affected by the laws to the people who administer and deliver the new laws.

Good laws and policies for people with disabilities, indeed for all people, can only be achieved if the people most affected have an important and meaningful role in their implementation. This is not easy to achieve but there is no other way.

# Lessons learned

- ▶ Citizens can own the law and policy making process.



This is a photograph of a group of self advocates celebrating the recognition by the Attorney General of British Columbia of the Community Coalition as a driving force in the reform of adult guardianship law in British Columbia.

Apart from teaching all of us a lot about how to celebrate, this photograph also tells us a lot about the story of the Representation Agreement in British Columbia. Citizens in British Columbia were well ahead of their government and their legal system in understanding the importance of ensuring legal personhood and citizenship and they took ownership of a process that only they could really understand. It took great courage and determination to claim ownership but they had much to lose if they did not.

# *Nidus* Personal Planning Resource Centre and Registry

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