

A Study of Personal Planning in British Columbia

REPRESENTATION AGREEMENTS WITH STANDARD POWERS

About this Study

This fact sheet presents findings from a quantitative analysis of 989 Representation Agreements with standard powers made and registered on or between January 01, 2006 and June 30, 2009.

The **Representation Agreement Act** (R.S.B.C. 1996 c.405) is the result of a grass-roots law reform initiative funded by the Law Foundation of BC. The *RA Act* was enacted February 28, 2000.

A Representation Agreement (RA) is a legal document that adults may make to appoint the person or people they choose to assist with decision making or to make decisions on their behalf. Section 7 of the *RA Act* outlines areas of authority, called standard powers, that may be included in an RA.

The legislation provides that all adults may make an RA with standard powers, even if they are not able to make a traditional contract or manage their own affairs or make decisions about their care. Also, the way an adult communicates is not a factor in determining whether the adult may make an RA.

Representation Agreements with standard powers are often referred to as a tool for supported decision making. Unlike adult guardianship, making an RA does not remove any of the adult's rights. An RA enables adults to maintain and enhance their self-determination by giving legal status to their personal supporters who will have the ability to assist them when needed. This also means adults retain their personhood and status as citizens.

The following analysis is of RAs that were made by adults who need help today as well as those who are planning for their own futures.

PRESENTED BY:

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Nidus is a non-profit, charitable organization established in 1995.

Nidus:

- promotes alternatives to adult guardianship;
- provides education on personal planning and BC's legal tools;
- operates a centralized Registry for personal planning documents.

Nidus is a Latin term for nest: a symbol of support, safety and self-development.

www.nidus.ca

Stay tuned for future research reports on personal planning in this series.

This fact sheet was produced with funds from a Law Foundation of BC small project grant.



Key Findings

- People of all ages, from 19 to 99 years old, are making Representation Agreements with standard powers.
- Monitors are appointed in more than half of RAs.
- 84% of RAs name more than one representative or name alternate representatives. Support and safety is in numbers!

Characteristics of Adult

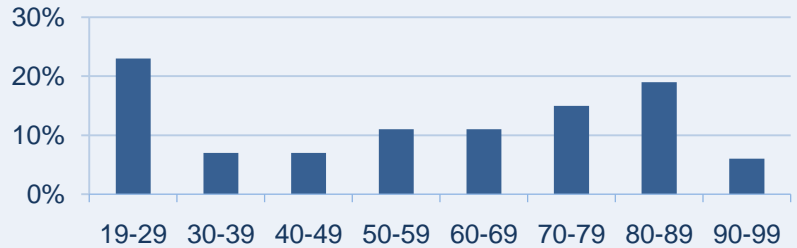
Who is making Representation Agreements with standard powers?

To make a Representation Agreement with standard powers you must be:

- an **adult** (19 years or older), and
- a resident of British Columbia.

Female **55%**

Male **45%**



...► Age 19 to 29 is the largest category at 23%

...► Adults between the ages 70 to 99 make up 40%

Characteristics of Representation Agreements (RAs)

Under Section 7 of the RA Act you may include one or all of these authorities:

- Minor and major health care as defined in the *Health Care Consent and Care Facility Admission Act*;
- Personal care matters including where the adult lives and with whom, diet, exercise, taking part in activities, personal safety, comfort care;
- Obtaining legal services and instructing counsel [a lawyer];
- Routine management of the adult's financial affairs.

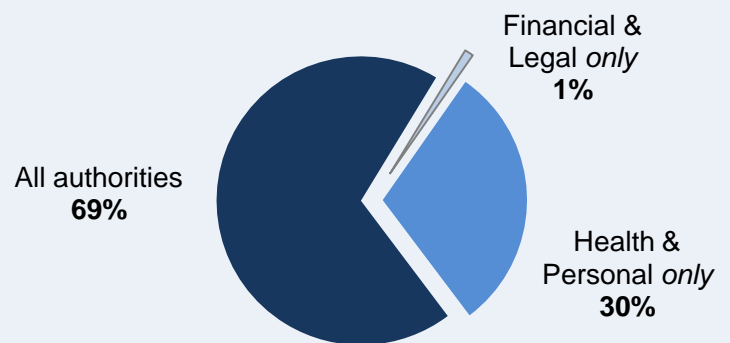
Three roles are outlined in the RA Act:

- Representative
- Alternate representative
- Monitor

Safeguard requirement for financial authority:

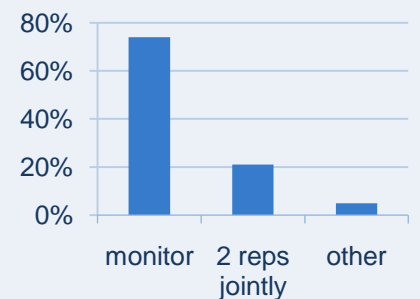
If financial authority is included in the RA, an extra safeguard is required. This is met by appointing someone as monitor or two or more representatives to act jointly for finances. (This requirement is waived if the representative is the adult's spouse.)

What authorities are being included?



If financial authority is included, how is the safeguard requirement being met?

...► The majority (74%) appoint a monitor rather than name two representatives to act jointly.



Characteristics of Representatives

A representative:

- must be 19 years or older;
- is authorized to assist the adult or to act on the adult's behalf.

If more than one representative is named for the same authority, they may be:

- required to act together (jointly); or
- allowed to act independently (one or both).

How many representatives are named?



54% name one rep



41% name two reps



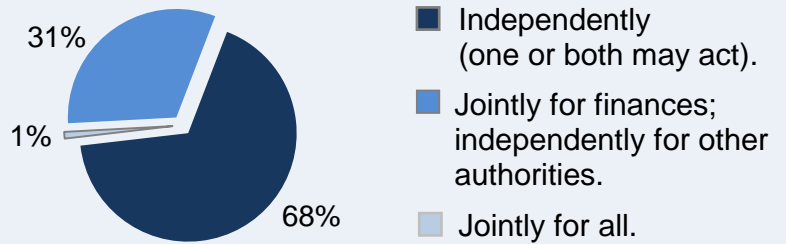
5% name three or more

Where do representatives live?

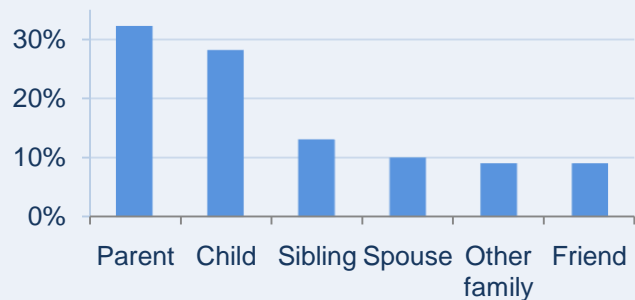
39% Same household as adult
 22% Same municipality
 20% Within 50 km

81% of reps live nearby

How is authority divided if two or more representatives are named?



What is the relationship of the representative to the adult?



Friends are chosen as representatives just as often as other family members.

Did you know?
 Only 16% chose one representative and no alternate!

Characteristics of Alternate Representatives

An alternate representative:

- is a 'back-up' in case the representative is temporarily or permanently unable or unwilling to act;
- is optional.

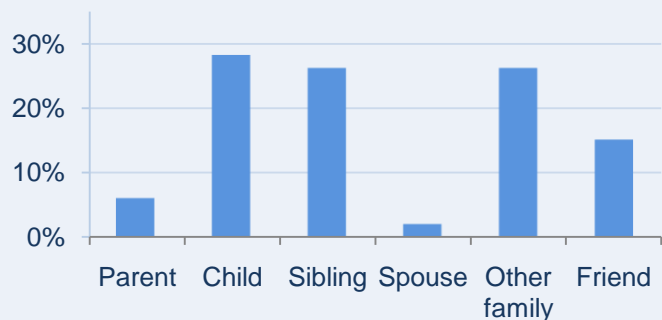
More than one alternate may be named.

How many alternates are named?

1 alternate 38%
 2 alternates 15%
 3 or more 3%

56% of adults name an alternate

What is the relationship of the alternate to the adult?



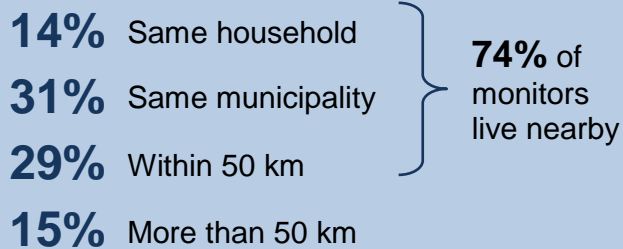
Other family members such as grand-children and in-laws are chosen as alternates as often as siblings.

Characteristics of Monitors

A monitor:

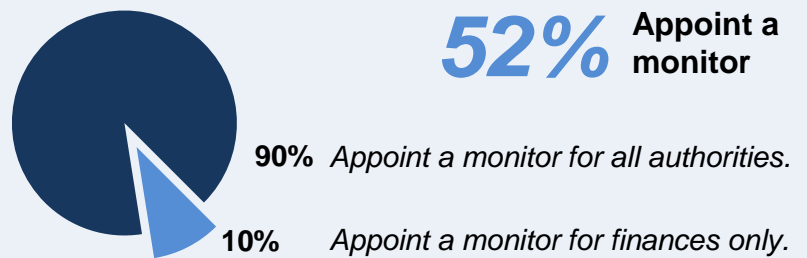
- must be a person, not an organization;
- must be 19 years or older;
- oversees that the representative is following his or her duties and provides support and problem-solving assistance;
- cannot be prevented from visiting or speaking with the adult;
- is optional;
- is one way to meet the safeguard requirement if financial authority is included in the RA (see bottom of page 2).

Where do monitors live?



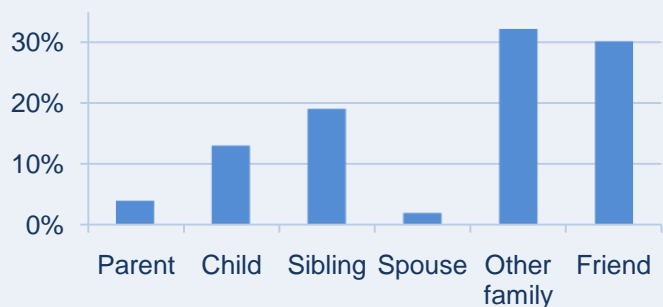
- ▶ Adults' personal support networks are made up mostly of people who live nearby.

How many RAs have a monitor?



- ▶ Monitors are appointed for authorities such as health care, even though they are not required as a safeguard.

What is the relationship of the monitor to the adult?



- ▶ Adults' personal support networks extend beyond the circle of their immediate family.

Discussion and Conclusions

- ▶ The fact that the highest percentage of RAs are made by the youngest age group suggests that RAs are an important tool in planning for the transition of youth to adulthood for those who need support.
- ▶ Monitors are being used often. It appears that people value aspects of this unique role beyond its safeguard function with respect to financial authority.
- ▶ People value a 'team approach' as seen by the frequency with which two or more supporters are named and with which the various roles are utilized. This reflects the community's experience that safety is in people, not regulations.
- ▶ It is evident from this data there was no uniform set up for an RA. It is clear from the number of people appointed, different roles assigned and various relationships involved that RAs are a flexible tool able to be used to meet a range of individual needs and situations.
- ▶ There is a need for qualitative research to gain insight into the motivations and experiences of adults and their personal supporters with respect to the making and using of Representation Agreements with standard powers. Sign up for the Nidus Newsletter to keep informed.