

Representation Agreements

When someone needs help with decision-making now.



What is a Representation Agreement?

A Representation Agreement is a legal document in British Columbia. It is the only way to name someone to act on your behalf for health and personal care matters. It can also cover routine financial and legal affairs.

A Representation Agreement can be for now. It will also help in the future, in case you have an accident or an illness and you need someone to say what your wishes are.

A Representation Agreement must be in writing. The person the Agreement belongs to will sign the Agreement with their name or a mark. Each person named in the Agreement will also sign that they accept their role and duties.

Then the Agreement can be registered so it will be available when needed.

Who can make an Agreement?

The law allows for any adult (19 years or older) to make a Representation Agreement.

The law says that the way a person communicates does not prevent them from making an Agreement. Some people communicate using symbols, gestures, body language or behaviour.

The law says that you may make a Representation Agreement even if you cannot manage your own finances or make decisions on your own about health care or personal care.

How does an Agreement work?

The person you choose to help you is called your representative. A representative helps you to make decisions. The representative is not a guardian. They do not take over your affairs. With a Representation Agreement, YOU are always at the centre of any decisions about you.

This fact sheet is for people who may need support with decision-making now due to a brain injury, stroke, disability, dementia or other illness or condition. For more information and other publications, call Nidus (see below) or visit our web site at www.nidus.ca

Why make a Representation Agreement?

In British Columbia, if you are 19 years or older, no one has automatic legal right to manage your affairs if you need help. If you don't have your own legal plan, other people or the court – NOT you – will decide who can help you.

How does making and registering an Agreement help me?

- You get help from people you trust and who know you.
- Your wishes won't be ignored.
- You get help speaking up for your rights.
- You are treated with dignity and respect when you need help.
- You avoid government involvement in your affairs.

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What things can a representative help me with?

Routine money management



Some examples: banking, paying bills, buying things I need, helping with my benefits, dealing with income tax and GST rebates, investments, vehicles.



Minor and major health care

Some examples: having a flu shot, going to the doctor or the dentist, arranging tests, deciding about surgery or medications.



Personal care

Some examples: choosing where to live, agreeing to take part in activities or programs, diet, exercise.



Getting legal help and telling them what you want

For example: hiring a lawyer to look after an accident claim or other legal problem.

Who should I choose as my representative?

You can choose a spouse or partner, family member or friend to be a representative.

A representative must be 19 years or older. They can live in another province or country. The Registry helps people keep in contact.

It is a good idea to choose someone to be an alternate representative so you will have a back up, in case something happens to the representative.

A discussion with a group of advocates produced the following list of qualities. A good representative is someone who:

- I trust
- helps me
- respects me
- listens to me
- knows me
- keeps my privacy
- understands me
- brings out the best in me
- is concerned about me and my life.

What are the responsibilities of a representative?

The law requires representatives to act honestly and to be trustworthy. Their first responsibility is to help you to make your own decisions. If they need to make a decision for you, they must consult you and consider your wishes, preferences and values (things that are important to you).

They must keep records of decisions and actions they take on your behalf. They have the same right to information and documents that you have a right to – including bank records, tax information and medical records. They must keep your personal information confidential.

Choosing a monitor

The law says that if your Agreement includes routine management of your finances, you **must** name someone to be a monitor, unless the representative is your spouse*.

The monitor can be a family member or friend. The monitor is someone who can check up and make sure the representative is following his or her duties. The monitor can also help your representative speak up for your wishes.

Instead of having a monitor you can choose two or more representatives to act jointly for finances (they will 'monitor' each other).

* *The definition of spouse includes same sex and common-law marriage-like relationships.*

What if I do not have an Agreement?

There are many factors that can affect what happens if you do not have an Agreement. There are some differences between finances and health care. Here are some examples.

FOR FINANCES:

Let's say you need help paying bills, applying for benefits or settling an insurance claim. If you do not make a legal document which gives someone authority to help with your finances, then your spouse or family may have to apply to court to become your guardian. Going to court takes time and is expensive. Guardianship is also difficult to reverse and you lose your rights when you are declared mentally incapable by a judge. If you do not have family or a friend who can go to court, the Public Guardian & Trustee (a government official) can take over your finances. They charge fees for this.

Representation Agreements are designed to be an alternative to guardianship for people who need help now to manage their affairs.

FOR HEALTH CARE:

In the case of health care, the doctor will decide if you can give consent (permission) for the care or treatment offered. If you have a Representation Agreement naming the person you trust, the doctor will go immediately to your representative. If you do not have a representative, the doctor must go by a list in the law to find someone to give permission.

The law requires the doctor to select a family member in a particular order: 1. spouse, 2. adult child, 3. parent, 4. sibling, 5. other relative by birth or adoption. The family member must also meet the requirements of the Health Care Consent law. But the family member might not be the one you would choose. Or, you may prefer to have a friend to help you.

If you do not have any family, the doctor must contact the Public Guardian and Trustee (PGT). The PGT is a government official and only his staff can authorize a friend or a relative-by-marriage to help you. If you do not have anyone, a person at the PGT office will decide for you.

Where do I register my Agreement?

The Nidus Personal Planning Resource Centre (a community organization) has set up a Registry for Representation Agreements. It is called the Nidus Registry. Nidus is a Latin word for nest.

The Registry is a safe place to put information about your Agreement. The registry keeps track of information such as who your legal representative is and how to contact them. This way, a hospital or bank can find out who you chose to speak for you if you need help. This saves delays and protects your wishes.

The Law Society of British Columbia also helps with the Registry to make sure only those you authorize can get information about your Agreement.

Do I have to go to a lawyer or notary public?

No. For the type of Representation Agreement discussed in this fact sheet, you are not required to go to a lawyer or notary public. You and those you choose **can make the Agreement yourselves**. The signing procedures require two witnesses. The Nidus Resource Centre can help you with more information and the forms. See next page.

Who needs an Agreement?

All BC adults need a Representation Agreement – BEFORE a crisis happens and before they need help with decision-making.

A Will is only for after death. Please note that a guardian named in a Will is only valid for a child under 19 years of age.

Making and registering a Representation Agreement is the **best protection for YOU** and for what is important to you. Having an Agreement in place provides certainty and continuity. It avoids surprises, extra costs and delays and makes sure that the people you trust and who know you are able to look out for you.

STEPS TO MAKING AND REGISTERING A REPRESENTATION AGREEMENT



1. Get information.

Talk with everyone involved about roles and responsibilities.
Contact Nidus for more details or if you have questions.

2. Decide on your Form Set-up.

What areas will be covered by the Agreement? (See page 2.)

Who is involved and what role will people have? (Note: a monitor is always an option; sometimes required.)

JAKE'S EXAMPLE:

Jake is 56. He enjoys sports and music. Jake lives in a group home. Jake communicates his preferences and wishes non-verbally. Jake's parents help others understand his communication and help Jake make decisions. But his father's recent diagnosis of cancer has made them aware that everyone needs a plan for the future. For Jake, this means having a plan for now and for the future. If something happens to Jake's parents who else knows Jake and has his trust?

FORM SET-UP: Areas to cover: all powers (financial, legal, minor and major health care and personal care)

Roles involved: Representatives – mother and father who may act independently
Alternate – brother
Monitor – family friend

MARI AND FRANK'S EXAMPLE:

Mari and Frank have been married for 45 years. They each made an enduring Power of Attorney a few years ago when they were well. An enduring Power of Attorney covers financial and legal matters only. Mari now has dementia. Mari needs Frank's help to make decisions. Frank also has health problems due to his diabetes. The doctor suggested Mari and Frank look into making a Representation Agreement to give someone they trust, the authority to make health care and personal care decisions on their behalf.

FORM SET-UP: Areas to cover: minor and major health care and personal care.

Roles involved:

For Mari: Representative – Frank
Alternate #1 – niece
Alternate #2 – friend

For Frank: Representative - niece
Alternate - friend

3. Contact Nidus for help to make your Representation Agreement.

Nidus has developed Self-help Kits that include the legal forms required to make a Representation Agreement with standard powers. Once the Form Set-up is determined, you are ready to order the Kit.

To order the Kit, payment is required in advance. The fee is \$50. (spousal rate is \$85.) The fee includes registration of the completed Representation Agreement.

Additional information to discuss with Nidus if any of the following apply:

- Is the adult visually impaired or blind?
- Is the adult physically incapable of holding a pen?
- Does anyone already have guardianship/committeeship over the adult's affairs?

4. Register the completed Representation Agreement with Nidus.

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