

## Representation Agreement Act

# AMENDMENTS

Amendments to British Columbia's Representation Agreement Act came into effect on September 1, 2011.

This fact sheet highlights some of the key changes affecting Representation Agreements (RA7 and RA9).

For **more resources**, go to [www.nidus.ca](http://www.nidus.ca) > Information (top menu bar) > click Representation Agreement or other topic.

### **Do I have to make a new Representation Agreement because of the amendments?**

No. A valid Representation Agreement (RA) made before September 1, 2011 remains in effect. However, some changes will apply to Agreements made before the amendments. One example is the duties of representatives.

### **Changes only affecting Representation Agreements under section 9 (RA9)**

#### **RA9 is separate and distinct from RA7**

Before September 1, 2011, a Representation Agreement started with standard powers listed under section 7 as a base. Adults could add other authorities listed in section 9, if they met the capability requirements and consulted a lawyer. In legal terms, section 7 and section 9 were 'stacked.'

As an example, for health care, section 7 listed minor and major health care. The authority to refuse life supporting health care could then be added to the Agreement from section 9. An RA might only have section 7 authorities or might have authorities from section 7 and section 9.

As of September 1, 2011, minor and major health care are also listed under section 9 along with other authorities. This means an RA9 is not built on authorities from the RA7; the RA9 is self-contained. The capability requirements to make an RA9 are still different from the RA7.

#### **Requirement to consult a lawyer is removed**

Before September 1, 2011, a Representation Agreement that included any authorities from section 9 required consultation with a lawyer (only lawyers were recognized) and the lawyer had to complete a Certificate of Consultation (also called Form 2), which must accompany the Agreement.

As of September 1, 2011, there is no requirement to consult a lawyer (or any other specific party) when making an RA9. There is also no longer a Certificate of Consultation.

Nidus provides a **free basic RA9 form** on its website, as well as **free basic RA7 forms**. At [www.nidus.ca](http://www.nidus.ca) — click **RA forms** in the rights sidebar.

### **No Certificates for RA9, except if monitor**

As of September 1, 2011, no Certificates are required when making an RA9, unless a monitor is named and then a Certificate of Monitor is required.

### **Financial authorities removed from RA9**

As of September 1, 2011, financial authorities are removed from the RA9. To cover the financial authorities that were included in the RA9 requires making an Enduring Power of Attorney (a separate legal document for financial and legal authorities).

If an Agreement made before September 1, 2011 includes financial authority under section 9 the financial authority is now treated like an Enduring Power of Attorney, under the Power of Attorney Act. The authority was provided in section 9(1)(g) *"do, on my behalf, any thing that can be done by an attorney acting under a power of attorney"*

An RA9 is now only for health and personal care authorities and can include the legal authority for a representative to make care and education decisions for minor children.

### **RA9 is in effect if one authorized person signs**

As of September 1, 2011, to be in effect, an RA9 only requires the signature of one person who will act as representative (unless a monitor is named, then the Certificate of Monitor must be completed). Nidus recommends that any named representative and alternate sign the RA9 in case of emergency and only one is available.

### **Changes that apply to RA9 and to RA7**

#### **Restrictions on who can be appointed in a Representation Agreement**

If you make a Representation Agreement on or after September 1, 2011, there are new restrictions on who you can name/appoint:

1. You cannot appoint someone who is compensated to provide health care or personal care services to you (for example, a paid caregiver or home share provider), unless the person is your spouse, parent or child.
2. You also cannot appoint someone who is an employee of a facility where you live, if the facility provides health or personal care services to you. Your spouse, parent or child is exempt from this restriction.

The law says the new restrictions do NOT apply to a valid RA made before September 1, 2011.

## Duties of a representative to keep records

The amendments add new requirements for keeping records about health care and personal care matters. The change applies as of September 1, 2011, to any representative acting under authority for health care and/or personal care, no matter when the Agreement was made.

For details, see Nidus fact sheet [Role of a Representative](#)

## Right of a representative to access information about adult's incapability

A representative has the right to access information and documents that the adult they represent is entitled to and that relate to the representative's area(s) of authority.

The amendments now state that a representative has access to information and documents an adult is entitled to and are related to the adult's incapability.

## Clarification of representative's authority

An amendment to the Representation Agreement Act makes clear that a representative cannot consent to consultation, treatment, or care related to the sterilization of an adult for non-therapeutic purposes.

## Changes only affecting Representation Agreements under Section 7 (RA7)

### Clarifications for Section 7 authority

An amendment makes clear that a representative named in an RA with only section 7 standard powers may not consent to restraining, moving or managing the adult or authorize anyone else to do so—if the adult objects.

In certain situations, an adult may have an Enduring Power of Attorney (EPA) in place and also an RA under section 7 that includes authority for routine management of financial affairs. Amendments to the Power of Attorney Act clarify that *if* there is a conflict or inconsistency between the financial authority in an RA and an EPA, the EPA takes priority.

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## Nidus Personal Planning Registry

The online Nidus Registry is for registering important information and documents you or others might need in case of a health crisis or other emergency such as a wildfire, flood, earthquake or tsunami.

The Nidus Registry is secure and private with 24/7 access. YOU stay in control.

Go to <https://nidusregistry.ca/> First Time? click **Sign Up** to create an account and register. Next Time? click **Log In**. For help, email [registry@nidus.ca](mailto:registry@nidus.ca)

## For Professionals & Policy Makers Practice Issues for Advance Care Planning

Ever since the Representation Agreement Act came into effect in February 2000, the fact that only lawyers were authorized as consultants for making a Representation Agreement with section 9 authorities, the uptake of Representation Agreements by the general public was negatively affected and led to misconceptions.

For example, we have heard remarks such as, 'I don't know why anyone would make a Representation Agreement with only section 7 standard powers, when they could make an Agreement that included section 9 authorities.'

There are many reasons why a person may choose to make an RA with only section 7 standard powers—and there are reasons why there was no option.

### Barriers to access

From 2000 to 2011, many adults—including seniors—have used the RA with section 7 standard powers as a future planning tool for health care and personal care. Even if they wanted to make an RA that included section 9 authorities, it was very difficult to find a lawyer who was knowledgeable, willing and affordable. Instead of being criticized, these seniors should be applauded for their advance care planning efforts and for their use of the legal tools reasonably available to them.

### Practical approach has benefits

For many seniors, the choice is a practical one: if they do not own real estate and have simple financial affairs (as many do), they can plan for everything in one document, under section 7. Routine finances, as well as personal care and minor and major health care can all be covered. They also like that the Representation Agreement Act is based on the principle of self-determination and not 'best interest' like Adult Guardianship/Committeeship and the Power of Attorney Act.

As well, they are comfortable with the idea that decisions about refusing life supporting health care (an authority under section 9) will, through default, be made by a consensus of family and the medical team.

### End-of-life decisions

Agreements with section 7 standard powers have often been dismissed as irrelevant to end-of-life care. This is FALSE. For example, consent to medication for pain is a common end-of-life decision, and is covered under minor health care. It is easy to fall into the habit of using the terms 'end-of-life care' and 'refusing life support' interchangeably, but these are not the same.