

# Representation Agreements

## Overview

*If it wasn't for the Representation Agreement Act, my rights and wishes could be misinterpreted or unknown — dealing with systems can be confusing and overwhelming. My representative is my advocate!*



### What do you need to know first?

The Representation Agreement Act (RA Act) is a BC law that is based on the real life experiences (some call this the lived experience) of people that may need it. Some things to know:

- This law was developed from the ground-up; most laws are developed from the top-down.
  - One of the key principles behind this law is **accessibility**. It will help government, health authorities and numerous other agencies to be compliant with the Accessible BC Act of 2021.
- The **Nidus** Resource Centre (who brings you this information) was set up as a non-profit in 1995 by disability and seniors groups and is grounded in the experiences of the **grass-roots** (real life).
  - We were involved in the development of the RA Act. Representation Agreements are our expertise.
  - We have led the education on Representation Agreements since the law came into effect.
  - We use the concept of 'estate planning' to refer to preparations for after death. We use the concept of '**personal planning**' to refer to being pro-active and making legal documents to deal with matters before death (while you are alive). The health system uses the term 'advance care planning,' which is part of personal planning.
- There are **4 life areas** to cover in personal planning: health care, personal care, legal affairs, financial matters. Adults may need help, while alive, in one or more of these life areas, because:
  - They are considered 'incapable' of making informed decisions or managing their affairs.
  - They want support to deal with complex systems like health care or finances.
- Every law has its own requirements. For example:
  - The requirements for making a valid Will are different from the requirements for making a valid Representation Agreement.
  - And, there are different requirements for different types of Representation Agreements!

### Why is this information important?

No one—not a parent or a spouse—has automatic authority to act on an adult's behalf if the adult needs help when alive because their cognitive capability is in question. Adults have two choices:

- 1) Be pro-active by making a legal document to give authority, or
- 2) Do nothing and authority is imposed.

### What is a Representation Agreement?

A Representation Agreement (RA) is a legal document under the [Representation Agreement Act](#) of BC (RA Act). The RA Act came into effect on February 28, 2000.

You must be an adult (19 years or older) to make a RA. In BC, the age of adulthood is 19 years.

A RA authorizes a representative to assist the adult with decision making (sometimes called supported decision making) or to act on the adult's behalf (sometimes called substitute decision making). It is wise to also name an alternate representative.

A RA is the only legal document in BC that can authorize someone for health care and personal care decisions. Some adults will make a type of RA that includes routine finances.

### How does the RA Act fill gaps in BC law?

Before the RA Act, BC only had legislation for making an Enduring Power of Attorney (EPA). There were two gaps or problems with this:

1. An EPA only applies to financial and legal matters. It does not let you be pro-active for health and personal care matters.
2. There was no way for adults who do not qualify to make an EPA to be pro-active. This means an adult with cognitive difficulties cannot be pro-active and authority must be imposed (such as through Adult Guardianship/Committeeship in which case the adult loses their rights and becomes a non-person). By including a new definition of capability for RAs with authorities from section 7, the RA Act enables all adults to be pro-active, even if they currently have cognitive difficulties.

The RA Act addressed the gaps or problems:

1. With the RA Act, BC now has legislation for **health care and personal care** matters (RA9 or RA7).
2. In addition, and the most significant achievement, the RA Act introduced **a new definition of capability** so BC now has a legal alternative to Adult Guardianship/Committeeship—the RA7.

| AFTER RA Act... | Financial & Legal on traditional path                                | Health Care & Personal Care on traditional path | Legal alternative to Adult Guardianship/Committeeship on RA7 path           |
|-----------------|--|---|---|
|                 | <b>Enduring Power of Attorney</b><br>Must be capable to 'understand' | <b>RA9</b><br>Must be capable to 'understand'   | <b>RA7</b><br>New definition of capability for aspects of all 4 life areas. |

In BC, the EPA remains the most comprehensive planning document for financial and legal matters, if an adult qualifies to make it. The RA9 is the most comprehensive for health and personal care.

But, if the adult does not qualify to make an EPA or RA9, they may make a RA under section 7 (RA7) and include authorities for routine finances and legal services as well as, or only for, minor and major health care and personal care matters.

## FREQUENTLY ASKED QUESTIONS

### What documents do I make?

**Start with the approach to capability** as shown on the chart at the bottom of this page. Then follow the big grey arrow from left to right to see what documents are based on that approach.

- **On the traditional cognitively capable path** (top part of chart below), **make:**
  - RA9 + EPA + Will.
 OR
  - RA9 + RA7F+L instead of EPA + Will.
- **On the RA7 path, if helping an adult who has cognitive difficulties** (bottom part of chart below), **make:**
  - RA7All
 OR
  - RA7H+P if a legal authority is already in place for financial affairs.

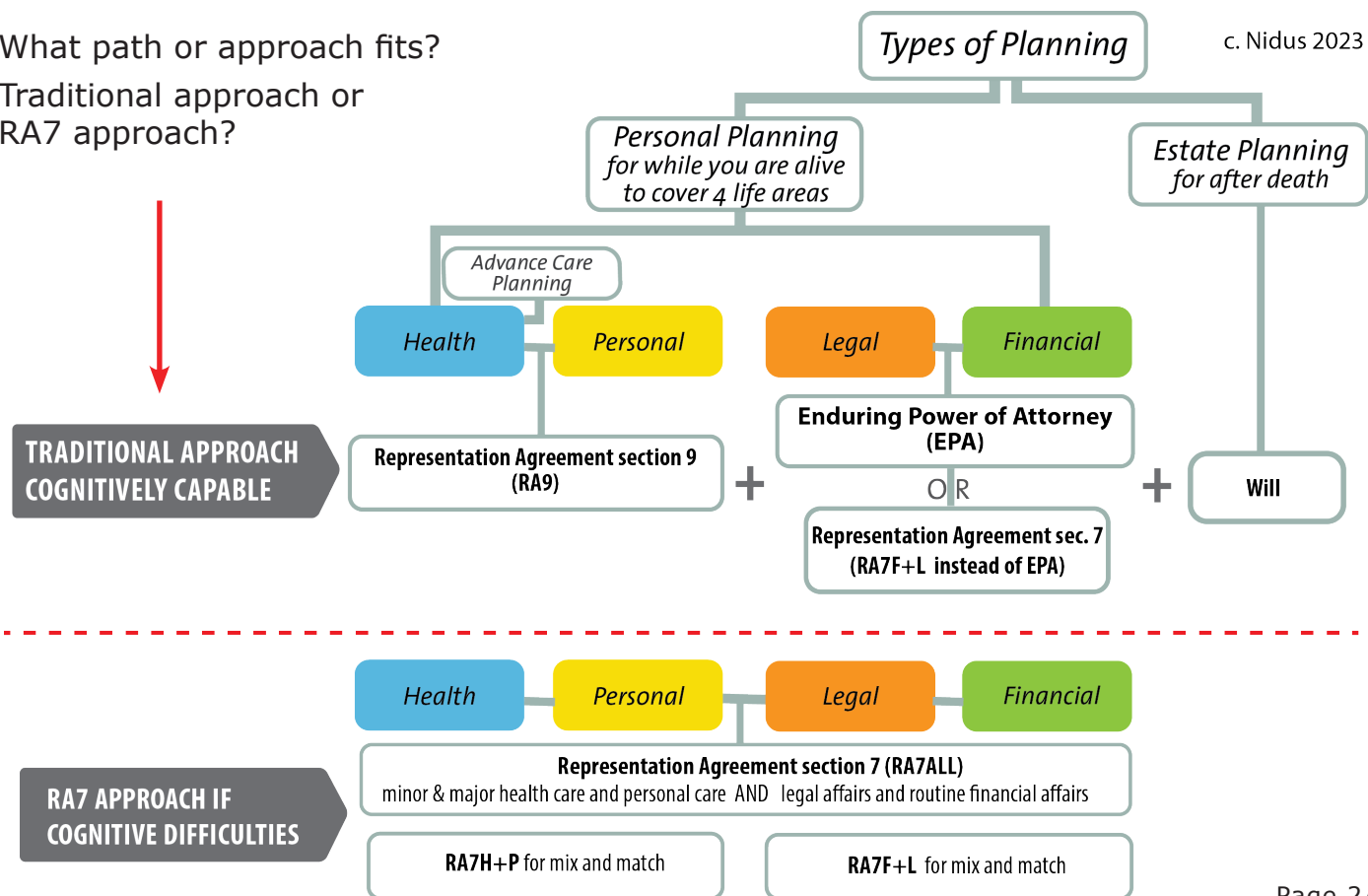
### Why are there different types of Representation Agreements?

You may hear RA7 and RA9 to describe two types of RAs. This shorthand is used for simplicity.

The authorities a representative may have in a RA are listed in section 7 or section 9 of the RA Act.

What path or approach fits?

Traditional approach or RA7 approach?



Each section (7 and 9) has different requirements about capability. Some adults will NOT qualify to make the RA9; they may make a RA7.

### Who qualifies to make the RA7?

The **RA7 approach to capability** for making a RA with one or more authorities from section 7 is different from the traditional cognitive approach. The RA7 approach is based on an inclusive definition of capability. The RA7 was designed for adults who have cognitive difficulties. If a doctor or psychiatrist says the adult cannot understand—this refers to documents on the traditional path. It does not prevent the adult from making any type of RA7. Read the fact sheet on RA7—see page 4.

### What are the authorities listed in section 7?

There are 4 **authorities** listed in section 7 of the RA Act:

- Minor and major health care matters.
- Personal care matters.
- Obtaining legal services and instructing counsel...
- Routine management of finances (to read the definition of 'routine' see More Resources on p.4).

### Who qualifies to make a RA9?

The RA9 is based on the traditional cognitive approach to capability. To make a RA9, the adult must independently understand what the RA9 covers and the consequences of making it.

Some adults do not qualify to make the RA9. These adults will make the RA7ALL or the RA7H+P.

### What are the authorities listed in section 9?

A RA9 has authorities for health care and personal care matters. The RA9 includes the health and personal care authorities from section 7 and a few more.

For example, a RA9 can authorize the representative to make decisions about the care and education of the adult's minor children (under age 19). To give this authority to a representative it must be a specific statement in the RA9.

### Does a RA automatically end?

The RA automatically ends when the adult who it belongs to dies. There are other ways a RA may end, such as if the adult signs a Notice of Revocation to cancel the RA7 or RA9 (Nidus has information and sample form).

A RA7 or RA9 does not expire after a certain length of time (unless this wording is in the RA). It is a good idea to review the RA regularly (maybe once a year). For example, review if the adult is still comfortable with those named in the RA and are those named still able to be involved?

### If I am cognitively capable now, do I make the RA7 when I have cognitive difficulties?

No. If you are cognitively capable to make the legal planning documents on the traditional path—like the RA9—you should NOT also make documents on the RA7 path. The RA9 can be used when you have cognitive difficulties.

The key is the adult's cognitive ability **at the time of making** the document(s). If the adult has cognitive difficulties, they may not meet the capability requirements for making the RA9 and EPA so they make the RA7ALL.

### Where do I find the legal forms?

The Nidus Resource Centre provides forms, instructions, information and tips for making a Representation Agreement (all kinds).

Go to [www.nidus.ca](http://www.nidus.ca) > click on RA Forms under Highlights in the right sidebar—scroll down.

The Nidus Resource Centre does not provide legal forms for making an EPA or a Will. We recommend reading free information on the website before going to a lawyer or notary public for these documents. See More Resources on p. 4.

### How do I make a Representation Agreement?

To make a RA (of any kind):

- NO legal professional is required.
  - NO medical assessment is required.
1. Start with the adult's current capability and select Traditional Approach or RA7 Approach.
  2. Check if anything is already in place.
  3. Then determine if gaps and what legal document is available on the capability path.

The Basic RA forms provided by the Nidus Resource Centre are free to download/print for personal use. You can also order customized RA forms, for a fee.

### Can there be different combinations?

Yes. A planning path does not necessarily go in a straight line. Sometimes you have to mix & match. Following are some examples:

- An adult may have made an EPA and a Will in the past when they were cognitively capable to understand what those documents covered and the effect of making them (the traditional approach), but now the adult has advanced dementia and cognitive difficulties.
  - The adult is considered not capable to make a new EPA or a new Will. Hopefully not needed.
  - Meanwhile the adult has nothing in place for health care or personal care matters. Despite their dementia, the adult may make a RA7H+P to fill the gap.

- In a different situation, an adult may have experienced a serious stroke and it is not clear yet if the brain damage is permanent.
  - The adult may have made a Will, before the stroke, but the Will has no meaning because the adult is alive. A Will is only for after death.
  - If nothing is in place, the adult makes a RA7ALL.
  - If the adult recovers their cognitive abilities, the adult can revoke (cancel) the RA7ALL and make a RA9 and an EPA from the traditional path.
- In the **community living sector**, it is most common that many adults with a disability from birth, autism, Fetal Alcohol Spectrum Disorder, and other types of disabilities (special needs), may make the RA7ALL when 'turning 19.'
  - In some cases, particularly for older adults in this sector, there may be a legal authority already in place for financial and legal matters (the Public Guardian and Trustee or a parent may be committee of estate for the adult). In this situation, the adult makes a RA7H+P to match up with the committee of estate.

### What if the adult has cognitive difficulties and does not have a Will?

No one can make or change a Will on someone's behalf.

Some adults will make a RA7 but not be capable to make a Will. The law for making a Will does not have an inclusive definition of capability like the RA7.

The Nidus Resource Centre provides information about how an estate is settled and who can inherit if there is no Will.

### New concepts and BC RA Act

The BC RA Act introduces new concepts into the law. This has affected policies and practices.

#### Self-Determination Over Best Interests

The primary legal duties of a representative are to follow the adult's wishes and values. In the past, the primary duty was only on 'best interests'— what someone else thinks is best for the adult.

#### Self-determination view:

- People are capable; even if needing a lot of help.
- People have a right to make their own decisions. 'Nothing about me, without me!'
- The key is 'listening' to the adult's communication. Some adults communicate through behaviours.
- It is human nature to sometimes make 'bad decisions' (Just look at the divorce rate...)

#### Best interest view is paternalistic (like colonialism of indigenous peoples):

- People don't know what is good for them.
- We have to protect people from making what we think are or will be bad decisions.
- I know what is best FOR you.

#### Supported Decision Making & Continuum

The grass-roots (people's) term is 'interdependent decision-making.' Academics and professionals created the term supported decision making.

The concept of interdependent decision making comes from the real life experience of personal supporters who naturally seek out and advocate for the wishes and values of the adult to ensure the adult's voice is at the centre of any decisions during times when the adult needs help speaking up and advocating for themselves.

A representative (RA7 or RA9) helps the adult participate in decision-making. They may use pictures, demonstrations or other methods.

In the past, systems, laws and policies only recognized substitute decision making. If an adult was considered cognitively incapable (and this included adults who did not communicate in traditional or expected ways), then the adult's personal supporters might be consulted but only to act on the adult's behalf and only for what was determined to be in the adult's best interest.

Representation Agreements recognize a **dynamic continuum** of decision making. Decisions are made independently. When needing help, most decisions are made interdependently and in some situations substitute decisions are made on behalf of the adult (for example, when adult is unconscious, in a coma or delirious).

#### Capability Fluctuates and is Multi-faceted

Evidence reinforces what we know from personal experience. Capability depends on many factors and can be specific to the individual. In the past, laws and systems were based on the concept that capability was like a toggle switch - it is off or on. Read more in the RA7 fact sheet.

## INFORMATION AND RESOURCES

### Where to find more resources?

Go to [www.nidus.ca](http://www.nidus.ca) > click Information (top menu bar) > click Representation Agreement (definition of routine finances, Notice of Revocation, fact sheets on RA7 and RA9, and more) or click on other topic.