

Representation Agreement

Section 7 Standard Powers (RA7)

For adults whose mental capability to 'understand' is in question.

Adults may make an RA7 even if they are considered not capable to 'understand' as required when making other legal documents. The RA7 has a different definition of capability than for other documents.



Most links are for resources at www.nidus.ca > Information (blue menu bar) > [Representation Agreement](#) You may wish to read the RA Overview fact sheet in that section.

What is a Representation Agreement?

A Representation Agreement is a legal document under the Representation Agreement Act of BC (RA Act). This law came into effect on February 28, 2000. There were some amendments (changes) to the law as of September 1, 2011.

There are two types of Representation Agreements (RA7 and RA9) and they have different capability requirements.

Who is this fact sheet for?

This fact sheet discusses the Representation Agreement section 7 (RA7) **for an adult whose mental capability to 'understand' is in question.**

This fact sheet is for you if:

1. You are helping an adult who does NOT meet the traditional definition of capability, and
2. There is no existing legal authority in place.

What is the traditional definition of capability?

The traditional definition of capability requires that an adult 'understand the nature and effect' of the document they are making. This is the definition applied to making legal documents such as a contract, a Will, types of powers of attorney, and a Representation Agreement section 9 (RA9). If you meet the traditional definition of capability please read the [RA9 fact sheet](#). It is important to read the information that applies to your situation or you will become confused.

The RA7 has a different definition of capability.

Who may make an RA7?

Making an RA7 depends on:

- Age; and
- Capability requirements.

You must be **at least 19 years old** (the age of adulthood in BC) in order to make an RA7.

The RA7 is unique because there are no up-front or specific requirements for capability. The RA7 definition recognizes that many factors are involved and may be different for different people. The important point is that **the law for RA7 views everyone as capable**. See pages 2-3 for details.

The RA7 is often called a legal alternative to adult guardianship because, before the RA7, there was only guardianship (called Committeeship in BC) for adults who did not meet the traditional definition of capability. Under guardianship, adults lose their civil rights and become a non-person.

The RA7 is intended to enable ALL adults to maintain their PERSONHOOD. Even if an adult does not meet the traditional definition of capability, they may make an RA7. This ensures access to support as needed. It is about equality.

Nidus provides RA7 forms on its website.

What are some examples for RA7?

Shaun is a middle-aged adult with a developmental disability. He **communicates in a non-traditional** way. Shaun needs help with banking, applying for benefits, dental work, consenting to medications, and taking directions from his physiotherapist.

Shaun's mother and brother can provide informal support but for many situations they require legal authority to help Shaun. For instance, the Canada Revenue Agency (CRA) cannot speak to Shaun's mother or brother about Shaun's income taxes unless a document is in place giving them legal authority. He is not capable to understand signing the CRA consent form. But he may make an RA7.

An RA7 All allows Shaun to give his personal supporters the legal authority to help him with aspects of all four areas of life: financial, legal, health and personal. It protects his privacy, supports his self-determination, and keeps him safe.

The RA7 protects the liability of third parties like CRA, hospitals, dentists, community living agencies, financial institutions, and government services.

EXAMPLES CONTINUED...

Todd is **turning 19** in a few months. He needs help managing his affairs and making decisions due to a disability at birth. His teacher has been talking with his parents about how they can support Todd when he becomes an adult. The teacher explained about the Representation Agreement section 7. The teacher has also been helping Todd with signing (making his mark). This is very important as Todd will sign (make his own mark) on his *RA7 All* in front of two independent witnesses.

Todd's teacher refers the parents to the Nidus website to read the five steps to helping someone make a Representation Agreement so they learn about how the RA7 is unique—to BC and in the world. They can learn how to use it effectively to support Todd as a person. Go to www.nidus.ca > click on the first photo/heading.

Cherry is a woman whose speech and memory has been affected by a **brain injury**. The Public Guardian and Trustee (PGT) is managing her financial and legal affairs as the statutory property guardian, but nothing is in place for health and personal care. Cherry makes an *RA7 H+P* and names her sister as her representative and her brother as the alternate to help her with health care and personal care decisions, such as decisions about rehabilitation and occupational therapy. Her representative will talk with the PGT to arrange for Cherry's money to pay for treatments and equipment needed to improve her quality-of-life.

Kam is a senior who recently suffered a **severe stroke**. He made a Will before his stroke, but he is not dead and the Will cannot help. Kam needs someone to arrange payment of the care facility bills from his bank account. With his nephew's help, Kam makes an *RA7 All* that includes authority for routine management of financial affairs, which would give Kam's nephew the authority to pay Kam's bills from his bank account and arrange direct deposit of his pension benefits. The *RA7 All* also covers health and personal care matters so Kam's nephew can help ensure Kam gets access to good care including rehabilitation services. Hopefully Kam will be able to leave the facility and resume his previous lifestyle (before the stroke).

When Joyce was first diagnosed with **Alzheimer Disease**, she met the capability requirements to make an Enduring Power of Attorney (EPA) and appointed her friend Barb in the EPA as her attorney. This allows Barb to manage financial

matters, but, as Joyce's dementia has progressed, she now needs help with her health and personal care decisions. It is more difficult for her to remember important details. Naming Barb as her representative for health care and personal care matters in an *RA7 H+P* gave Joyce peace of mind. Barb can be present during medical appointments to help Joyce speak up for her wishes. Barb can help by picking up medications at the pharmacy and accessing information and communicating with health care providers on Joyce's behalf.

OTHER EXAMPLES

Above are some examples to highlight the variety of situations where the *RA7* is helpful to seniors as well as adults with a developmental disability. Some other situations include adults:

- With Fetal Alcohol Spectrum Disorder;
- With autism;
- With schizophrenia;
- Under the Mental Health Act...

How does an adult make an RA7?

You do not have to consult a legal professional to make an *RA7*. Nidus provides a self-help process so people can help each other.

This fact sheet explains that ALL adults are capable to make an *RA7*, even if they cannot make other legal documents. An adult may make an *RA7* even if a doctor or a psychiatrist thinks the adult is not capable of managing their finances or making health or personal care decisions. In fact, such a comment would be a 'green light' for making an *RA7* — to ensure the adult has an advocate when they are most vulnerable.

Usually supporters have a good sense about an adult's capability from reading the Nidus fact sheet and other experiences with the service system. Formal assessments are not required for making a Representation Agreement and can be intimidating and stigmatizing. Medical assessments are useful for determining a possible medical diagnosis and suggesting medical treatments; they are not necessary or applicable for the *RA7*.

Nidus provides Basic *RA7* forms or you can order a Custom *RA7*. More details are discussed on page 4.

What does the RA Act say about capability?

The RA Act, section 3, states that until the contrary is demonstrated:

- Everyone is presumed capable of making their own decisions and of making a Representation Agreement, and
- The way an adult communicates does not prevent them from making a Representation Agreement.

What does the RA Act say about capability to make an RA7?

Section 8 of the RA Act applies specifically to the RA7. It provides a different definition of capability than the traditional definition to 'understand' that was discussed on page 1.

Section 8 of the RA Act says that:

- An adult may make an RA7 EVEN IF the adult can NOT make a contract.

This means an adult may make an RA7, EVEN IF it is not clear whether the adult 'understands the nature and effect' of the matters covered in an RA7.

Section 8 says all relevant factors must be considered about capability to make an RA7, for example:

- Whether the adult communicates a desire to have a representative make, help make, or stop making decisions; or
- Whether the adult demonstrates choices and preferences and can express feelings of approval or disapproval of others; or
- Whether the adult is aware that making the representation agreement or changing or revoking any of the provisions means that the representative may make, or stop making, decisions or choices that affect the adult; or
- Whether the adult has a relationship with the representative that is characterized by trust.

The above list of examples from section 8 are not requirements or criteria for making an RA7. There is no specific up-front test of mental capability.

Remember, the WAY an adult communicates is not a factor when considering capability. Some adults communicate through their behaviour.

NOTE: Nidus highlights the second and fourth bullets in particular in its community work.

If the adult communicates in a non-traditional way, we focus personal supporters on describing how the adult communicates "John bounces his right leg up and down when he is happy." Usually supporters can also come up with a list of 'likes' and 'dislikes.' These descriptions can be written down on a separate page to accompany the RA7. It is a great way to involve professionals and paid staff, and to recognize the different ways that people interact — in different situations and with different people.

Sometimes people misread the fourth bullet and say that an adult must demonstrate they trust the representative. This is not accurate. There are usually many people who can attest to the trusting nature of a relationship between the adult and the

representative. This is especially true for people with developmental disabilities who tend to interact with professionals and service systems from birth.

In one case, an adult did not have any family members to be involved in their Agreement. The personal supporters were former staff and friends. They decided that they should each write about their involvement with the adult and the nature of the trusting relationship. The best part of this exercise was that it showed that the relationships were not just one-sided — each supporter talked about the benefits they received from the relationship with the adult. Again, these descriptions were available to accompany the RA7.

Nidus has found that the process of making an RA7 and talking about capability has been important for learning about and seeing the adult as self-determined. Pictures and videos are also helpful for these discussions.

Understanding the lived experience — capability & service systems

The Representation Agreement Act (RA Act) is based on real life experiences, but this is not the basis of many policies and procedures in the health and social service systems.

When dealing with service systems, users quickly learn that the system's focus is on disabilities and incapacities — you can't get services unless the adult has the 'right' problems or deficits to qualify. (This is one way to manage resources and demands.) On the other hand, Representation Agreements are based on supporting an adult's capabilities and self-determination.

Personal supporters/caregivers often find it stressful to bridge these contrasting views.

This is a good opportunity to note that not only has there been no education in any sector about the MAKING of Representation Agreements, there has also been no education about the USING of Representation Agreements. Nidus has developed expertise about 'using' in its role as a hub for gathering and sharing people's experiences.

What authorities are available under section 7?

There are four authorities, also called standard powers, listed in section 7 of the RA Act. These cover aspects of four life areas — in bold below.

- Routine management of **financial affairs**, such as banking, applying for and managing government benefits, dealing with the Canada Revenue Agency, and managing investments. (See p.7, *Other Nidus Resources*, to find a full list of activities for this authority in the law.)

- **Legal affairs**, which include obtaining legal services, instructing a lawyer, settling an insurance claim (perhaps due to a motor vehicle accident), going to small claims court.
- **Minor and major health care**, which includes decisions and consent about medications, tests, dental work, surgery, end-of-life comfort care, any treatment requiring a general anesthetic.
- **Personal care**, including decisions about living arrangements, diet, exercise, taking part in activities, and personal safety issues.

What is included in the Nidus Basic RA7 All?

The Nidus **Basic RA7 All** form includes all of the four authorities listed under the previous heading.

It is for naming three people — 1 representative, 1 alternate, and a monitor. See more about these roles in this fact sheet under 'Frequently Asked Questions.' You can use the Nidus Basic RA7 All form if you do not have anyone to be an alternate.

You can order a Custom RA7 All form if you want all four authorities but a different configuration of the roles, such as two representatives or two alternates.

See page 7 for details on finding the RA7 forms.

What is included in the Nidus Basic RA7 H+P?

Nidus also provides a **Basic RA7 H+P** form that only includes the authorities for health care and personal care (see bullets above).

The RA7 H+P form is for adults whose financial and legal affairs are already covered by another authority. For example:

- Earlier you read how Cherry's financial and legal affairs are being managed by the Public Guardian and Trustee. Cherry can make an RA7 H+P.
- When Joyce was capable to understand, she made an Enduring Power of Attorney (EPA) to cover her financial and legal affairs. Later, as her dementia advanced, her mental capability to understand came into question and she makes an RA7 H+P to cover health and personal care matters as these are not covered by the EPA. [Joyce could have made an RA9 when she was capable of making an EPA but perhaps she did not know about it.]

The Nidus Basic RA7 H+P is for naming two people — 1 representative, 1 alternate. You can use the Basic RA7 H+P if you do not have anyone to be an alternate. The wording for the Basic RA7 H+P is flexible for when the alternate can replace a representative, making it similar to naming two representatives. But you can order a **Custom RA7 H+P** if you want a different setup from the basic.

See page 7 for details on finding the RA7 forms.

What is not covered in an RA7?

Because the RA7 has a different definition of capability than the traditional requirement to 'understand,' the RA7 does not include all authorities that can be covered in an Enduring Power of Attorney (EPA) and a Representation Agreement under section 9 (RA9). For example:

- An RA7 can include authority for routine finances but this does not cover dealing with real estate. An EPA can cover real estate if the adult meets the capability requirements when they make it.
- An RA7 can include authority for minor and major health care but this does not authorize a representative to have the final say to refuse life supporting health care. This can be covered in an RA9, providing the adult meets the capability requirements when they make the RA9.

The RA7 forms by Nidus include details of the representative's authorities. The information section of the form explains what is not covered and ways that an Agreement may be ended. See page 7 on where to find the RA7 forms by Nidus.

NOTE: *An RA7 does not allow a representative to set up a joint bank account with the adult. The adult's property, including bank accounts, must be kept separate. This is a common misunderstanding. An RA7 with authority for routine finances allows a representative to assist an adult with their bank account. However, the bank account stays in the adult's name. This is an important principle behind the RA Act. The same applies to an EPA.*

If there is an existing joint bank account or other jointly owned property, it can continue. But, an RA7 or EPA cannot set up a new joint ownership with the adult. In some cases, a person might consider removing themselves from the joint account and help the adult manage their money and their bank account using the RA7 or EPA.

FREQUENTLY ASKED QUESTIONS

What roles are available for an RA7?

The RA Act describes three roles. A representative is necessary, other roles are optional, but see the information under the monitor role.

Nidus promotes these roles to act like a team, working together with the adult. The roles available are:

- A representative(s) is the person who has legal authority to assist the adult or to act on the adult's behalf.
- An alternate representative(s) is a back-up in case the representative is unable or unwilling to act or continue to act.

- A monitor is a safeguard and ensures that the Agreement is working for the adult. A monitor can NOT make decisions for the adult and they are not like an alternate who 'moves up.' Only one monitor can be named in an Agreement (the law does not provide for naming more than one or for naming an alternate monitor).
 - The monitor role is common for an RA7 because of the extra safeguard requirement if an Agreement includes finances. See right column for more details.

Who can be named in an RA7?

The idea of Representation Agreements is to strengthen or create a PERSONAL support network around an adult—so the adult has help when ill or injured and when dealing with service systems. An Agreement gives legal status to personal supporters.

Most people name a spouse, family member, or friend in their Agreement. The law does not restrict where they live (it can be another city, province, or country), although it is important to think about practical issues related to the roles.

There are many factors to consider about who is named in a Representation Agreement, such as:

- Their relationship with the adult;
- Their skills and abilities;
- Their willingness to work with others named in the adult's Agreement; and
- Their respect for the adult's wishes and values.

What are the restrictions on who is named?

Due to amendments on September 1, 2011, the law now has some restrictions on who can be named.

The adult can NOT name an individual as a **representative (or an alternate)**, if:

- The individual is compensated to provide health care or personal care services to the adult (e.g. a paid caregiver, home share provider); or
- The individual is an employee of a facility where the adult lives and the facility provides health care or personal care services to the adult (e.g. assisted living residence, care facility).

These restrictions do NOT apply if the individual is the adult's spouse, parent, or child.

An RA7 made BEFORE September 1, 2011 did not have these restrictions and the law says such Agreements may continue to be in effect and are NOT affected by the restrictions.

I heard the monitor role was required for an RA7. Is this true? (Read carefully!)

No, it is not true that a monitor must be named for an RA7, BUT if the RA7 **includes finances** and

there is no monitor, **other wording** is required to meet the EXTRA SAFEGUARD REQUIREMENT. It is common that a monitor is named because it meets the extra safeguard requirement for routine finances and provides the most flexibility.

The RA Act says an **extra safeguard** is required if the authority for **routine management of financial affairs** (one of the authorities under section 7) is included in a Representation Agreement.

The extra safeguard requirement can be met by:

1. Naming someone in the monitor role; or
2. Naming two or more representatives who must act jointly for finances (special legal wording is required as in a Custom RA7).

The law provides ONE exception to the extra safeguard requirement. If the representative is the adult's spouse, an extra safeguard is NOT required for routine finances. But be careful, if the same Agreement names an alternate (not a spouse) and finances are included, an extra safeguard would be required for the alternate to act.

The extra safeguard has nothing to do with whether or not the adult trusts a parent, son/daughter, sister/brother, or friend with their finances, it is a requirement of the RA Act.

NOTE: For Agreements made before September 1, 2011, there was another exception to the extra safeguard requirement — if the Agreement was signed by a lawyer and the lawyer completed a Certificate of Consultation. This exception does NOT apply to Representation Agreements made after September 1, 2011.

Who can be named as a monitor?

To be named a **monitor**, an individual must be 19 years or older and willing to accept their duties. Their duties are outlined in section 20 of the RA Act. See the Nidus fact sheet on [Role of Monitor](#)

A monitor can NOT be an organization and therefore can NOT be a position within an organization. An individual agrees to be a monitor because of a personal relationship with the adult.

NOTE: Although it is not restricted by the law, it could be a conflict and a challenge for someone in a paid role, that is directly related to providing services to the adult, to be named as a monitor. This would be especially true if the person does not have a personal relationship with the adult such as a family member or friend. Is it fair or realistic to expect a paid staff or professional to be loyal to the adult AND to their employer? This should be discussed. It is also important that the monitor can work as a team with the representative and alternate, to support the adult.

What are the duties of a representative?

The duties of a representative are outlined in section 16 of the RA Act, which says that a representative must act honestly, in good faith, and within the law. A representative is there to assist the adult to participate in decisions affecting them. This means a representative needs to be contacted and involved—they need to know what is going on in case they are called in at some point to act on the adult's behalf.

Read more about duties in the Nidus fact sheet on [Role of Representative](#)

Does my representative get paid?

Representatives, alternate representatives, and the monitor are entitled to be reimbursed for reasonable out-of-pocket expenses related to carrying out their duties.

The law says a representative cannot receive a fee (on top of expenses) for making health care decisions on the adult's behalf. For a representative/alternate/monitor to be paid a fee for other authorities, this must be spelled out in the Agreement and it must be approved by the Supreme Court of BC.

When should an Agreement be made?

The best time to make an Agreement is before a crisis occurs.

Many people with a disability from birth or childhood, make an RA7 when they become an adult (age 19), because parental rights end. However, the role of representative is different from that of a parent. A representative helps the adult be respected for their own wishes and needs.

Almost everyone will make more than one Representation Agreement in their lifetime, especially if their first one is at age 19.

When does an RA7 take effect?

An RA7, using Nidus forms, comes into effect immediately, when all signing is completed, so it is ready-to-go when needed.

An RA7 requires all Certificates to be completed and attached or the RA7 is not in effect. The Nidus RA7 form comes with Certificates and pages are numbered so you can keep everything in order.

The adult and witnesses must sign together at the same time. Others named in the Agreement will have paperwork to sign but do not need witnesses and can sign at a later time and at different times. Detailed instructions come with the Representation Agreement forms by Nidus and, if followed, the Agreement will be valid.

Make sure the Agreement is registered (this is your ultimate back-up and reminds you where the original is located).

Never lose the original—you need it to make copies and it is proof of authority. Never make changes on your original; keep information updated in the Registry.

What if we have to make changes?

Some changes to a Representation Agreement do not make the Agreement invalid. However, changing the people named or the authorities included requires revoking (cancelling) the existing Agreement and making a new one. See the Nidus fact sheet on [Making Changes](#)

Can I revoke my Representation Agreement?

Yes, the adult can revoke (cancel) their Agreement. The RA Act outlines specific requirements for revoking.

Making a new Representation Agreement does NOT automatically revoke a previous one. See the Nidus fact sheet on [Revoking an Agreement](#)

Can a representative resign?

Yes, a representative, alternate, or monitor may resign from the Agreement they are named in.

Sometimes this may require the adult to make a new Agreement. See the Nidus fact sheet on [Resigning from a Representation Agreement](#)

When does a Representation Agreement end?

A Representation Agreement ends if the adult revokes (cancels) it and when the adult dies. An Agreement also ends if someone is appointed to be the adult's legal guardian (in BC, called a committee) See [Lifespan of a Representation Agreement](#)

What can NOT be authorized in a Representation Agreement?

The RA Act says you can NOT authorize a representative:

- To do anything that is against the law — such as not pay the adult's taxes or to help an adult commit suicide or request medical assistance in dying for the adult (euthanasia).
- To give consent to sterilization of the adult for non-therapeutic purposes.
- To refuse consent to treatment or placement related to the adult's mental disorder if the adult is involuntarily committed under the Mental Health Act.
 - This is often referred to as the 'Mental Health Act Override.'
 - The representative retains authority for other matters not related to the mental disorder.

How do I register?

Nidus operates the Personal Planning Registry where you can register the Agreement after it is completed.

You can also register 'Other Documents' you might need if evacuated due to a wildfire or flood.

Do NOT send any paperwork to Nidus. The Nidus Registry is online for you to do it yourself.

The first step is to Sign-UP/Create an Account; then scroll down to Registration Options.

Go to www.nidus.ca - click the **Registry** tab (top blue menu bar) > [Registry Instructions](#)

Where do I find other Nidus resources?

Find Representation Agreement resources (mentioned in this fact sheet and more) on the Nidus website at www.nidus.ca

Click on **Information** (top blue menu bar) > select [Representation Agreement](#)

Under the Information tab, you will also find other topics.

Where do I find Representation Agreement forms by Nidus?

Nidus does not recommend drafting your own Representation Agreement. The RA Act lists many legal requirements. Nidus forms are legally valid and also include wording to make them practical especially for health care matters, which can be urgent and time sensitive.

The illustration below shows where to find RA7 information and forms on the Nidus website homepage. Make sure you click on the section that corresponds to your situation — go to www.nidus.ca

<i>Helping a Relative with a DISABILITY</i>	<i>I'm planning on the FUTURE PATH</i>	<i>Caring for an Adult Who NEEDS HELP NOW</i>
Helping an adult with a disability from birth or childhood?	Are you considered capable now and want to prepare?	Helping someone whose mental capability was affected in adulthood?
Info & Forms for RA7 <i>Adult may make even if considered not capable to understand (e.g. special needs)</i>	Info & Forms for RA9 & more <i>For those capable to understand now—don't wait for a crisis!</i>	Info & Forms for RA7 <i>Adult may make even if considered not capable to understand (e.g. severe stroke, advanced dementia).</i>
Click FIRST photo	Click MIDDLE photo	Click THIRD photo

What if I want personal help?

Nidus provides personal help by phone appointment. Due to limited funds and staff, you need to book the appointment online but anyone can do this for you. Go to www.nidus.ca — click Get Help (top blue menu bar) > [Appointments](#)

If you need help to access the Nidus website for information and forms, ask at your public library or MLA office.

How can you help yourself and Nidus?

Nidus does not receive funding for core education and assistance activities. This includes answering questions we receive by email.

Please help us continue to be a leading resource:

- We need to regularly review and sometimes revise our materials and the website.
- There is currently no organization like Nidus in any other province or country.

You can help by **making a donation** to Nidus (see the box below). You can donate online or mail a cheque — make an annual donation or become a sustaining donor.

You can also help by **promoting the Registry service**. The Registry pays for itself and any surplus goes to supporting the charitable education programs of the Nidus Resource Centre.

Another view of RA7 and supported decision making.

The RA7 is recognized around the world as a legal document that recognizes and enables inclusion and accessibility. It inspired part of the United Nations Convention on the Rights of Persons with Disabilities.

BC is a leader (from 1993) in its conception of supported decision making and a new legal definition of capability — striving for equality for all adults, including those with intellectual disabilities.

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