

# How Health Care Decisions are Made in BC

## Legal Authorities for Informed Consent

*“To ensure the focus is on me and to make things easier for my family and the health system, it helps if I made a Representation Agreement before a health crisis occurs.”*



The Health Care Consent and Care Facility Admission Act and Health Care Consent Regulation outlines the requirements for informed consent to health care in BC.

The legislation came into effect in February 2000. It applies to adults. (In BC, the age of adulthood is 19 years.)

For more details, click [Health Care Consent in BC: Your Rights and the Law](#), or locate the fact sheet on the Nidus website, see page 2 “More Resources.”

The law describes the elements of informed consent, exceptions to getting consent, and who a health care provider can appoint as a **Temporary** Substitute Decision Maker (TSDM) for making health care decisions on behalf of an adult if:

- No other legal authority is in place; and
- The adult is incapable of informed consent for the health care being offered.

### **How does informed consent to health care work?**

Health care providers in BC must get Informed consent for health care that is offered. This means the health care provider must provide information on the diagnosis, proposed health care, risks and benefits of the proposed health care and alternatives. The health care provider must also give time for questions and answers.

According to the law, consent must be voluntary, relate to the proposed health care, be given or refused by an adult who is capable.

In many health care settings, the health care provider (your family doctor, nurse practitioner, dentist, etc.) will know you (the adult) and your capability to make health care decisions. However, in new care settings with different staff, you or others will have to provide information about any existing court order for committee of person or legal planning documents (Representation Agreement, stand-alone Advance Directive).

The practice in this area is evolving as the health care system learns more about various BC laws and procedures and as more BC adults exercise their self-determination by making a Representation Agreement to authorize those they trust and who know them best.

### **What are the legal authorities that the health care provider goes to for informed consent?**

The following legal authorities do NOT require a health care provider to first determine the adult’s capability.

1. If a court-appointed **committee of person** is in place, then the adult has already been declared incapable by the Supreme Court of BC. The health care provider needs a copy of the court order that states who is the adult’s committee of person. The health care provider goes directly to the committee of person for informed consent to any health care offered to the adult (unless the court order restricts authority for health care).

In BC, Adult Guardianship (also called Committeeship) happens when someone (usually a family member) hires a lawyer and applies to the Supreme Court of BC to be appointed as the adult’s committee of person (personal guardian).

If the committee of person dies or is unable or unwilling to act, the Public Guardian and Trustee (government official) assumes the authority unless and until someone else applies to the court to be the adult’s committee of person.

Committeeship is rare because it is costly (to the adult), takes time, and is difficult to reverse. Adult Guardianship is from a different era and is not in keeping with disability rights. It is sometimes called civil death because it removes the adult’s civil rights and they become a non-person. Click to read [Adult Guardianship/Committeeship in BC](#), or locate the fact sheet on the Nidus website, see p.2 “More Resources.”

2. **You** and/or your **representative** give or refuse informed consent to health care that is offered to you. A Representation Agreement is a legal document in BC that provides built-in support. An adult does not have to be determined incapable by the court or a health care provider in order to get help.

If you made a Representation Agreement (RA7 or RA9) and it is in effect when completed and for current wishes, you will make decisions **independently** (but your representative has authority to do tasks for you

such as accessing information). A representative has authority to support you with making decisions **interdependently**, or they may make a decision **on your behalf**. The role of a representative is to assist you to be self-determined — to exercise your rights. It is about YOUR wishes, values and beliefs, not the representative's. See [Representation Agreements in BC for Health Care](#)

If there is NO committee of person and there is NO Representation Agreement or the Agreement is not yet in effect, the health care provider must determine if the adult is incapable of informed consent before getting consent from other authorities (#3 and #4 below). If the adult is found capable, the adult consents.

### How is incapability determined?

Determination of capability/incapability is based on whether the adult can demonstrate two things:

- A. The adult **understands** the information provided by the health care provider such as what kind of health care is being offered, its purpose, and the benefits and risks; and
- B. The adult **understands** that the information applies to them.

### Who consents if adult is determined incapable?

If the adult is found incapable of informed consent, the health care provider will get consent from the following:

3. A **representative** named in a Representation Agreement (RA7 or RA9) that was not already in effect (see #2 previous page).
4. A **stand-alone Advance Directive** — instructions written by an adult while capable about health care they give or refuse consent for when incapable. The health care provider can only follow the stand-alone Advance Directive if the instructions relate directly to the health care being offered. For details, read [Advance Directives in BC](#)

If the health care provider determines the adult is incapable and no legal authority is in place (as ranked above) or it does not apply, the health care provider selects someone from a list in the law to be the adult's **Temporary Substitute Decision Maker** (TSDM). This authority is not permanent and does not apply in an emergency. For details, read [The Role and Scope of Authority of a TSDM](#)

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**EXAMPLE:** *Albert is a widower with three adult children. He recently needed surgery to insert a pacemaker. Unfortunately, he developed a blood clot during surgery and had a stroke. When Patrick stopped in to see Albert, his father, he learned about the stroke. Patrick found his dad confused and groggy. The hospital resident doctor came by to talk to Albert about his condition and to get consent for medication and some tests. Albert's speech was unclear and he did not seem to understand when Patrick asked if he wanted a glass of water. Patrick knew his dad did not respond well to anaesthetic or to painkillers. Patrick asked the doctor questions about his dad, and the doctor asked if Albert had a Representation Agreement. Patrick wasn't sure. He said his sister might know. The doctor said he would come back to get consent.*

*As it turned out, Albert made a Will — but he is not dead. Albert does not have a Representation Agreement in place and no stand-alone Advance Directive, if it would even apply.*

*Any one of Albert's three adult children could be selected to be his TSDM. The doctor could select Patrick as TSDM to give or refuse consent for the medication and tests right now. Because the authority of a TSDM is 'temporary,' the doctor might select Ashley or Paul as TSDM at another time.*

*All three of Albert's children want to ensure he gets the best rehabilitation services possible. The TSDM role only covers health care but Albert needs help in all life areas, not just health care. They also think it is better for Albert and easier on the health care system if there is certainty and continuity for health care decisions. They do not want to apply to be committee of person because of how it stigmatizes Albert, especially if he gets better and wants to reverse it. The three children help Albert make a Representation Agreement under section 7 (RA7All). Nidus provides RA forms.*

### More Resources from Nidus

For more information, go to [www.nidus.ca](http://www.nidus.ca) > Information (top menu bar) > [Health Care Consent](#)

- Health Care Consent in BC: Your Rights & the Law
- Role and Scope of Authority of a TSDM
- Duty for Notice when a TSDM is Selected for Major Health Care in BC
- Giving Consent to a Plan for Minor Health Care in BC
- Representation Agreements for Health Care in BC
- Advance Directives in BC
- Adult Guardianship/Committeeship in BC

For Representation Agreement forms, go to [www.nidus.ca](http://www.nidus.ca) > click [RA Forms](#) under Highlights in right sidebar.