

Role of the Monitor

The monitor role in the Representation Agreement Act is unique for British Columbia legislation. Nidus' involvement in facilitating Representation Agreements has taught us how valuable this role is for keeping things on track.

Why appoint a monitor in a Representation Agreement?

Benefits of the monitor role

A monitor can be a valuable role in a Representation Agreement. For example, if a bank staff person or health care provider has a concern, they will speak to the monitor who can look into the issue. The general policy of the Public Guardian and Trustee (government official) is to direct complaints to the monitor first (if one is named). This is helpful because it facilitates discussion and problem solving at the local level with those most involved.

The monitor may take on other roles such as helping the adult review the Agreement once a year.

The monitor as the extra safeguard for finances

If routine financial affairs are included in a Representation Agreement with Section 7 standard powers, an extra safeguard is required.

This safeguard can be met if someone is appointed in the Agreement as a monitor or if two or more representatives are appointed and required to act jointly for finances. The extra safeguard is waived if the representative is the adult's spouse.

Naming a monitor as the extra safeguard gives flexibility (representatives acting jointly may not be convenient if they live in different households or communities).

The monitor as an option

Most adults name a monitor in their Representation Agreement for all areas of authority, not just for finances. It is pro-active.

The main benefit of the monitor role is that it gives reassurance to professionals and institutions. The legal duties of a monitor are separate and independent from the representative's decision making role.

A monitor is particularly helpful when there are a number of people named in the Agreement or involved in the adult's life. The monitor can help coordinate meetings and information-sharing.

A monitor is also important if there is existing conflict or tension among any parties involved. The monitor's involvement can keep things positive — 'outsiders' know there is oversight and know they have someone to talk to about any concerns or questions.

In the case of a second marriage and a blended family, it can be helpful to have a monitor to assist with communication and to reinforce *your* wishes and preferences.

Some middle-aged adults have appointed a monitor because they named their adult children as representatives but felt the children needed the support of someone older and with more life experience in case a challenging decision had to be made.

If the monitor is unable to act

If the monitor dies, becomes incapable, resigns or is unsuitable, AND the adult cannot make a new Agreement, the Public Guardian and Trustee may name a replacement.

If the PGT declines to name a replacement, or the representative or other interested party disagrees with the PGT's choice, they can ask the B.C. Supreme Court to find that a monitor is not required or to name a different replacement.

In most cases, the adult will be able to make a new Representation Agreement if the monitor is unable or unwilling to act.

Best Practice Tip

To be pro-active, the monitor and representative(s) should arrange to review information and records on a regular basis. This is good for communication and will prevent misunderstandings. It also strengthens the team.

Don't forget that everyone is accountable to the adult. The adult needs to be involved in discussions too.

It is also a good idea to include the alternate. The alternate(s) may have to take over at short notice.

Responsibilities of the Monitor

The monitor's duties are outlined in Section 20 of the Representation Agreement Act. You can view the Act at www.bclaws.ca.

This plain language explanation is specific to a **Representation Agreement with Section 7** standard powers.

Exercising general duties

As the monitor, your legal duty is to try to make sure the representative is carrying out their duties. You act as a safeguard and support to ensure the Agreement is working for the adult. Your loyalty is to the adult.

As the monitor, you must act honestly and in good faith and use the care, attention and skill of a responsible person.

You do not make decisions. In your role as the monitor you do not have authority to sign or act on behalf of the adult.

Exercising problem-solving role

The most crucial role of the monitor is to help with communication and problem-solving.

If there is a concern that a representative might not be following their duties, according to the law or the terms of the Representation Agreement, as the monitor, you must:

- Let the adult and all representative(s) and alternate(s) named in the Agreement know about the concern.
- Try to resolve the problem.
 - This will require gathering information, getting clarification and discussing solutions with the representative.

If, after checking and discussion, you believe that the representative is not following their duties or is abusing the adult in any way, as the monitor, you are legally required to contact the Public Guardian and Trustee's Office (a B.C. government office) and make an official complaint.

The PGT staff must review the complaint in a timely manner. To contact the PGT, phone 604.660.4444 in Vancouver. In Victoria, call 250.387.6121 and ask for the PGT Office. All other areas of BC call 1.800.663.7867.

Keeping information confidential

As the monitor, you must keep any personal information about the adult and the adult's affairs confidential except as required to carry out your duties.

Rights of the Monitor

Having contact with the adult

No one can prevent you, the monitor, from having contact with the adult.

Requesting information from the representative

The monitor has a right to request information from the representative if the monitor believes there is a problem. This may be financial records (if finances are an authority included in the Agreement) or health and personal care records (if health care and personal care are authorities included in the Agreement) or records and information about other types of decisions or actions.

Being paid for out-of-pocket expenses

As the monitor, you may be reimbursed for reasonable out-of-pocket expenses that relate to carrying out their duties. Expense claims and payments should be documented.

A monitor cannot be paid a fee unless the B.C. Supreme Court authorizes it. If the Public Guardian and Trustee (PGT) appoints a replacement monitor, the PGT may authorize a fee.

Resigning from your role

You may resign from your role as the monitor. This must be in writing and copies given to the adult and all representatives and alternates named in the Agreement. See the Nidus information sheet on **Resigning as a Representative**. It lists the requirements on how the written notice must be delivered to the necessary people.

Being protected from liability

The monitor may not be liable (legally responsible) for actions you take or fail to take when carrying out your duties as outlined in the Representation Agreement Act and the terms of the Representation Agreement.