

Role and Responsibilities of a Representative

This fact sheet is based on the Representation Agreement Act of British Columbia as amended September 1, 2011. These duties apply to all representatives whether the Representation Agreement was made before, on, or after September 1, 2011. If you were named as a representative in an Agreement made before September 1, 2011 see the Nidus fact sheet on [Amendments and pre-Sept. 1st Agreements](#).

Your legal duties are outlined in Section 16 of the Representation Agreement Act. You can view the Act at www.bclaws.ca. The following is a plain language explanation of the role and duties.

Being accountable

As a representative, you are accountable to the adult. Representatives may also encounter questions from the Public Guardian and Trustee, Health Authorities or Community Living B.C., who have a role to investigate complaints of abuse of adults who are incapable.

Exercising general duties

A representative must act honestly, in good faith and within the law. It helps if you have good communication skills, as you may need to deal with many different people and situations.

Exercising assisted decision making duty

A representative's first legal responsibility is to *assist* the adult to make their own decisions. For example, you can help with the communication process so the adult can make their own choices.

Exercising substitute decision making duty

When making decisions on the adult's *behalf*, a representative must still check with the adult first to determine the adult's current wishes. If the current wishes cannot be determined or are not reasonable to follow, then any pre-expressed wishes must be followed – things that the adult said or wrote down when they were capable. If these are unknown, then decisions are made according to the adult's values and beliefs. The adult is always at the centre of all decisions. Only as a last resort does a representative impose their opinion of what is best for the adult.

Keeping records

You must keep records of the things you do while acting as a representative. The monitor (if one is named in the Agreement) or the Public Guardian and Trustee (a government official) may ask to see

these, at which point you must produce them. A journal can help for writing down dates, outlining a brief description of the circumstances, listing the people involved (e.g., name of doctor, dentist, etc.), and recording the decision you made or the action you took and why.

For **financial matters**, you must make a reasonable effort to determine and keep a list of the adult's property (what the adult owns) and liabilities (what the adult owes) when you first start acting on *behalf* of the adult. For the period you are acting as the representative, you must keep a current list of the adult's property and liabilities, including an estimate of their value. You must also keep a record of all invoices, bank statements, receipts, bills and other records related to any financial activities.

For **health care and personal care matters**, you must keep copies of any record the adult made of their instructions, wishes, beliefs and values.

You must also keep a record of events in the adult's life related to the following:

- Any changes to the adult's residence;
- Any changes in the adult's health or personal care needs; and
- Whether you authorized that the adult be physically restrained, moved, or managed under the authority granted in Section 9 of the Representation Agreement Act, or under any other enactment.

You must also keep a record of decisions you make related to the following:

- Major health care;
- The adult's admission or continued residence in a care facility; and
- Any restrictions on who may contact or associate with the adult.

If you are named as a representative in an Agreement with Section 9 broader powers, the adult may have included special wording to modify or omit the specific health and personal care record-keeping requirements listed above. However, it is still necessary to keep a record of actions and decisions taken when carrying out your duties.

No delegating your authority

The Representation Agreement Act says that you cannot delegate your authority as a representative to anyone else. Delegating authority means giving someone else the power to make a decision for the adult. There is one exception regarding investments. See the next page.

Managing investments

Representatives can manage the adult's investments. The Trustee Act outlines the rules for investing. It says you must invest the adult's monies as an experienced and reliable investor would. This is a high standard.

The Representation Agreement Act says you may delegate your authority for decisions about investments to a qualified investment specialist.

Keeping your property and money separate

As a representative, you must keep the adult's money and other property separate from your own unless it belonged to you and the adult as joint tenants, *before* the Agreement was made. For example:

When Shaun turned 19, he made a Representation Agreement with Section 7 standard powers. The Agreement includes the authority for routine management of financial affairs, which gives Shaun's representatives the authority to help him manage things like bank accounts. Someone suggested Shaun should set up a joint bank account with Anna, one of his representatives. However, Anna can NOT use the Representation Agreement to set up a joint account in both their names. Anna CAN use the Agreement to help Shaun open a bank account in his name only and help him manage it. This way, Shaun's money stays in his name and he gets the help he needs.

A representative also cannot borrow or use the adult's money for their own benefit or to help anyone else. The adult's money is for the adult's benefit.

Keeping information confidential

You must keep the adult's personal information private except when necessary to:

- Carry out your duties; or
- Provide information to the Public Guardian and Trustee (a government official) for investigation; or
- Make a court application.

Not acting if you are a paid caregiver or an employee of a facility

As of Sept. 1, 2011, unless you are the adult's spouse, parent or child, an adult cannot *name* you as a representative or alternate if you are:

- Compensated (for example, a paid caregiver) for providing health or personal care services to the adult.

- An employee of a care facility where the adult lives and receives health or personal care services.

The Community Care and Assisted Living Act covers residential or other care provided to an adult by a licensed community care facility/agency. That law states that a licensee or an officer, director, agent, designate, employee, contractor, person 'ordinarily present' or volunteer of the licensee cannot *act* as a representative if named in an Agreement made by an adult who is in care or was formerly in care. There are NO exceptions.

Rights of a Representative

Accessing information

As a representative, you have a right to the same information and records the adult has a right to – for example, to the adult's medical chart or bank statements – as long as these are related to your area of authority, or to the adult's incapability.

Being paid for out-of-pocket expenses

You have a right to be refunded for reasonable expenses resulting from carrying out your duties. Keep a record of expenses and payments.

The Representation Agreement Act says a representative cannot be paid a fee for making health care decisions. Only the B.C. Supreme Court can authorize payment of fees to a representative for other types of decisions or payment of fees to the monitor.

Getting help and advice

Representatives can use and hire help and advice to carry out their responsibilities. For example, you might need an occupational therapist to advise on equipment or an accountant to do the adult's taxes.

Resigning from your role

Click for the Nidus fact sheet on [Resigning as a Representative](#) or at www.nidus.ca - Information > Representation Agreement > More Resources.

Being protected from liability

A representative may not be liable (legally responsible) for errors or damages as long as you follow your duties and any requirements stated in the Agreement.

A representative cannot do anything that is illegal or be expected to do things the adult asks that are impossible or unreasonable.