

Tips for Strengthening a Representation Agreement For Those Whose Capability May Be Questioned

The Representation Agreement Act is unique because it supports a different view of capability than the traditional one set out in other laws such as for making a Will or making a Power of Attorney.

This means you may be considered mentally incapable of making a Will or a Power of Attorney, and yet be capable of making a Representation Agreement with Section 7 standard powers.

Presumption of Capability

- ▶ The *Representation Agreement Act* says that everyone is presumed capable of making a Representation Agreement until the contrary is demonstrated.
- ▶ The Act also says that the way you communicate is NOT a factor in determining whether you are capable of making a Representation Agreement. People communicate in a variety of ways, including by gestures, vocalizing or behaviour.
- ▶ The Act further states that you may make a Representation Agreement with Section 7 standard powers even if you are not capable of signing a traditional contract and cannot manage your own affairs or make decisions independently about your care.
- ▶ The Act recognizes that capability is multi-faceted. It is not 'all or nothing;' it changes over time, it depends on the task and it is helped by the support of others.

Safeguards

- ▶ When your capability is in question, you are at risk of losing your rights and your self-determination.
- ▶ Safety is having more than one person in your life who cares about you. Your personal supporters will help you speak up for your rights. They will help others recognize your communication and your wishes. This way, instead of being viewed as 'vulnerable' you will be seen as capable.
- ▶ The Representation Agreement Act was designed to strengthen and create personal support networks. The Act provides three roles for a Representation Agreement - representative, alternate and monitor. You can read more about these roles and their responsibilities in the Nidus fact sheets at www.nidus.ca - Information - Representation Agreement - Resources. Also read the Stories under the Your News section.

Possible Factors in a Challenge

- ▶ The Representation Agreement Act (Section 8) says that all relevant factors must be considered if someone were to challenge an adult's capability to make a Representation Agreement. The Act then gives examples of some factors that must be considered such as:
 - Does the adult demonstrate choices and preferences and can they express feelings of approval or disapproval of others?
 - Is the relationship between the adult and his or her representative characterized by trust?
- ▶ The above are examples of factors; they are not requirements. It is important to note that there are NO specific requirements for determining whether an adult is capable or incapable of making a Representation Agreement with Section 7 standard powers.
- ▶ How do you prevent a challenge? Be proactive. This fact sheet shares ideas that other personal supporters have used to demonstrate up-front how the adult they support is capable. These ideas are based on the examples of factors suggested by the Representation Agreement Act.

Ways to Strengthen the Agreement

- ▶ If you think there may be some question or challenge about the adult's capability and/or your ability to represent the adult, here are some ways to address this. Even the process of thinking about and discussing these topics will be valuable. It will prepare you for your role as a representative, alternate or monitor.
- ▶ If you decide to include additional information as suggested below and shown in the following examples, put it on separate pages rather than including in the Representation Agreement. Paperclip the additional pages to the Representation Agreement.

1. Tip: Get informed

First – YOU have to be aware of the differences between the Representation Agreement and adult guardianship. Representatives do not 'take over' the adult's affairs. Representatives 'do with' the adult. This is sometimes referred to as supported decision making in contrast to substitute decision making. Watch the Nidus video Representations Agreements as a legal alternative to Adult Guardianship. Go to www.nidus.ca - Self-Help - Videos.

Learn about your role as a representative, alternate or monitor. The Nidus website includes fact sheets and stories to help you.

2. Tip: Document communication and preferences

If the adult does not communicate in a traditional way, record how he or she communicates and expresses him or herself. What are some of his or her preferences, likes and dislikes? How do you know this?

Seek input from others such as family members, friends, paid caregivers/staff, the doctor or social worker etc. The more open and transparent you are in the process of doing this, the less likely it will be challenged. See below for an example of documenting preferences. Consider making a video or a photo album.

"I may communicate using gestures (gazing and sometimes reaching). I was learning cause and effect on a computer touch screen. I was learning if I reached out to touch the computer screen I could make the picture on the screen change. I am not always able to make my hand do what I want because I have a lot of seizures, which interfere with my thoughts and abilities. However, I was able to prove to my teacher, when not having seizures; I can learn cause and effect.

I express pleasure by smiles, eye contact and most often by bouncing my right leg up and down. I will comply with simple tasks requested of me when I am content, such as reaching for my drink cup when requested to do so (and if I am thirsty), pushing my arms into my sleeves when asked.

I express displeasure with facial frowns, pushing people away with my arms. I can be resistive to touch especially my left hand. I turn my face away and clamp my lips shut from unwanted food or if I need a break from eating. If I don't like a particular person I will hide my face in my arm or put my head down to my chest and refuse eye contact.

I like swimming, mat and exercise time, free time sitting independently on the floor, horseback riding, group functions like Easter Seal Camp, working hand over hand with pottery and clay, sleeping in, eating, bowling, country music, people watching without them knowing I'm watching, family functions, some action movies, figure skating on the TV, sun tanning, pretty girls and traveling.

I show I like these things by bouncing my right foot, remaining alert, occasional smiles, vocalizing, making eye contact and trying to participate to the best of my capabilities. "

3. Tip: Describe relationships

If the representatives are not family members or if they are family members who have only been recently reunited with the adult, you might consider describing the relationship between the adult and those involved in the Agreement. You could do this in writing and attach it to the Agreement or you could get creative and do it by video. See below.

Describing the ways we know Jim... (List the name, address, phone and role.)

H.L., Representative: *I have known Jim since 1985 aafter Tranquille was closed and he was living in the community. I first met Jim as his staff at _____ and have formed a close personal friendship with him over those years. Since Jim has moved to Burnaby I visit weekly and on most holidays. I also help Jim organize social events for friends and family.*

S.Y., Alternate: *I am new to Jim's network. My friend H.L. invited me to a picnic last year. It turns out Jim and I like the same kind of music. We really clicked. I helped him choose an iPod and we have been transferring music from CDs. Jim may not speak but we share a universal language with music. Although I do not have a long history with Jim; I want to stay involved and be a part of his future. As the alternate, I can learn from the representative and monitor who have known Jim for a longer time.*

Y.K., Monitor: *I am Jim's sister. When Jim went to the institution at Tranquille, we did not have much contact. Our family had to move away from Kamloops which made it particularly difficult. Thanks to H.L. I was able to get re-acquainted with my brother five years ago. H.L. and Jim's support staff helped me learn how Jim communicates. Jim and I have been putting together a family photo album. so he can see his baby pictures and the rest of his family. We have had laughs and tears over this project. I am going to set up Skype so he and our brother in Ontario can have a visit.*

4. Tip: List other supporters

Make a list of others who support the making of the Agreement. This might be the doctor, family members, friends, social worker, etc. Doing this helps make more people aware of the Agreement and adds extra support and safety around the adult. This could also serve as a list of key contacts and resource people which might be handy for the representative.

Members of Jim's extended support network who are aware of and support this Representation Agreement: (list name, involvement, contact details)

Other family (not named in the Agreement)

Friends

Social worker

Physiotherapist

Physician

Support staff