

# Representation Agreements

## Overview



*If it wasn't for the Representation Agreement Act, my rights and wishes could be misinterpreted or unknown — dealing with systems can be confusing and overwhelming. My representative is my advocate!*

This information focuses on Representation Agreements. It mentions some other legal documents available in BC. You will find information, videos and stories on the Nidus Resource Centre website at [nidus.ca](http://nidus.ca)

### What do you need to know first?

No one—not a parent or a spouse—has automatic authority to act on an adult's behalf. Adults have two choices:

1. **Be pro-active** (if the law allows) by making a legal document to give authority, or
2. Do nothing and **authority is imposed**.

### What are legal planning documents for?

Making a Will for after death is well-known. A Will has no effect if an adult is alive and needs help.

This information relies on two practical and related concepts:

1. **Personal Planning**—making legal documents to give someone authority to act while the adult is alive.
2. **4 Life Areas**—an adult may need help making decisions or managing their affairs in one or all life areas: health; personal; legal; financial.

### How does the law prevent some people from being pro-active?

Although the Canadian Charter of Rights and Freedoms says disability should not be cause for discrimination—the capability requirements for making legal planning documents as set out in provincial/territorial legislation discriminate against people with cognitive difficulties (intellectual disabilities).

Capability requirements for making legal planning documents are based on a traditional (cognitive) approach to understand.

The effect of this barrier is that people with cognitive difficulties cannot be pro-active; authority is imposed. In some cases, Adult Guardianship is imposed, resulting in loss of rights for the adult and being labelled a non-person.

Change is needed to accommodate **all** adults.

### How has BC legislation changed?

In 1993, all political parties in BC supported passage of the Representation Agreement Act (RA Act) and related legislation to reform the law—to make personal planning accessible and inclusive

The RA Act is based on the real life experiences (some call this the lived experience) of people that may need it. See p.4 about new concepts.

The RA Act includes a new approach and definition of capability in [section 8](#), which is different from the traditional approach. This new approach accommodates adults with cognitive difficulties.

Under the RA Act, adults may make a Representation Agreement with authorities from section 7—even if they have cognitive difficulties to understand. The RA7 has [built-in safeguards](#).

### How does the RA Act fill gaps in BC law?

Before the RA Act, BC only had legislation for making an Enduring Power of Attorney (EPA) and it was based on the traditional (cognitive) approach to capability. This presented two gaps or problems:

1. An EPA only applies to financial and legal matters. What about planning for health care and personal care matters?

With the RA Act, BC now has legislation for **health care and personal care** (RA9 or RA7).

2. What about a legal alternative to Adult Guardianship (called Committeeship in BC) for folks who have cognitive difficulties to understand?

With the RA Act, BC now has a **legal alternative** to [Adult Guardianship/Committeeship](#)—the RA7.

| AFTER RA Act... | Financial & Legal on traditional path                                | Health Care & Personal Care on traditional path | Legal alternative to Adult Guardianship/Committeeship on RA7 path           |
|-----------------|--|---|---|
|                 | <b>Enduring Power of Attorney</b><br>Must be capable to 'understand' | <b>RA9</b><br>Must be capable to 'understand'   | <b>RA7</b><br>New definition of capability for aspects of all 4 life areas. |

### What is a Representation Agreement?

A Representation Agreement (RA) is a legal document under the BC RA Act. The RA Act came into effect on February 28, 2000.

You must be an adult (19 years or older) to make a RA. (In BC, the age of adulthood is 19 years.)

A RA authorizes a representative to assist the adult with decision making (sometimes called supported decision making) or to act on the adult’s behalf (sometimes called substitute decision making). It is wise to also name an alternate representative.

A RA is the **only legal document in BC that covers health care and personal care.**

Some adults will make a type of RA that includes routine finances.

### FREQUENTLY ASKED QUESTIONS

#### What legal documents are available in BC?

The chart below shows the legal documents available under BC legislation—according to the **current** capability of the maker.

The Nidus Resource Centre has free forms for making a Representation Agreement.

Adults who have the cognitive ability to understand will follow the path for the **traditional approach** (see chart below). There are 3 essential (separate) documents.

- Make RA9 + EPA + Will.
- OR
- Make RA9 + RA7F+L instead of EPA + Will.

If you are helping an adult who has cognitive difficulties, maybe since birth or due to advanced dementia, help them with the **RA7 approach**.

- Make RA7All
- OR
- Make RA7H+P if a legal authority is already in place for financial affairs.

#### Where do I find the RA forms?

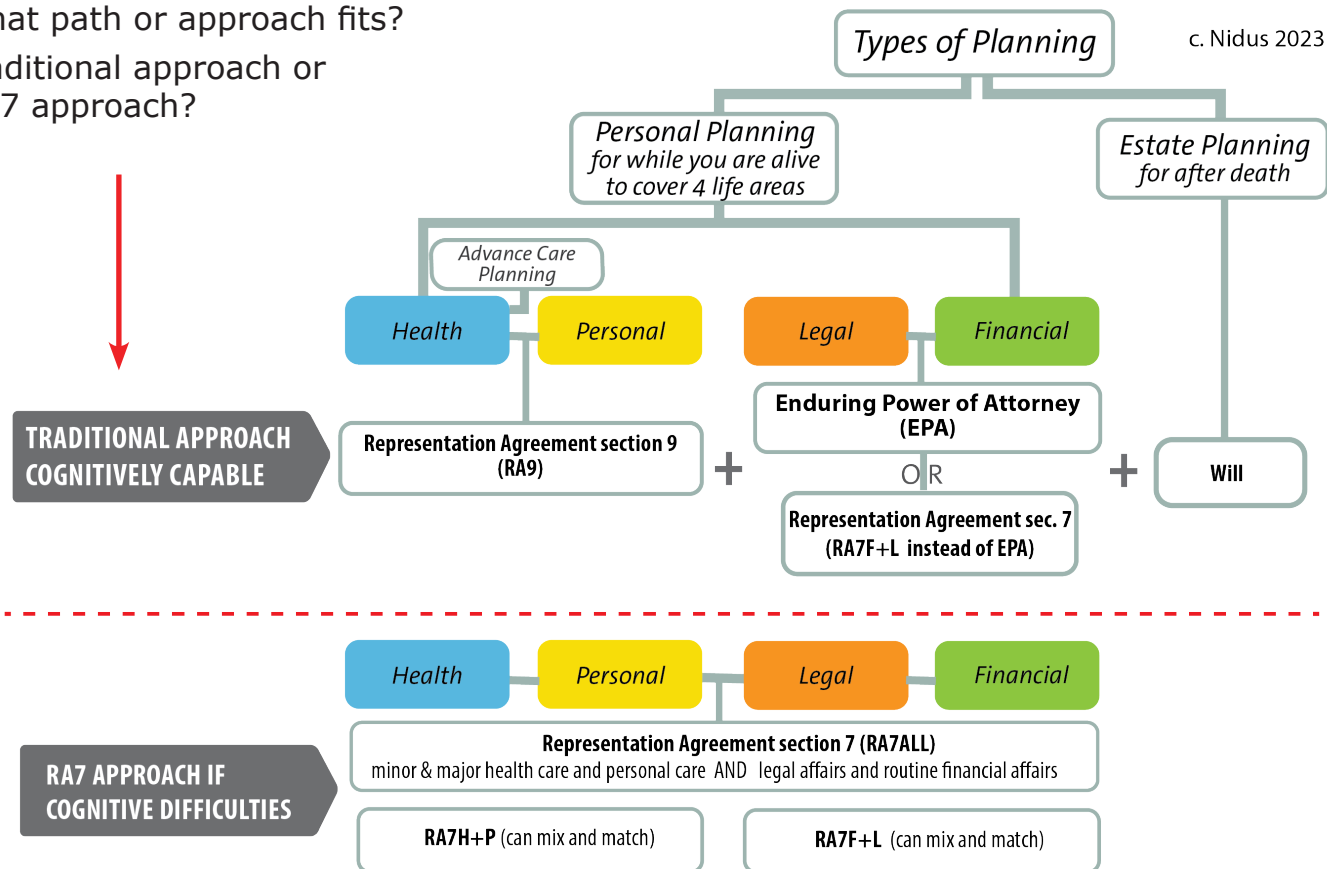
The Nidus Resource Centre provides free Basic RA forms for personal use. Go to [nidus.ca](http://nidus.ca) > see Forms.

Nidus does not have forms for the EPA or Will.

- It is recommended going to a lawyer or notary public for making your EPA and your Will.
- The Nidus Resource Centre has free information on [EPA](#) and [Will Tips](#) to help you get informed before meeting with the legal professional.

What path or approach fits?

Traditional approach or RA7 approach?



## How do I make a Representation Agreement?

To make a RA (of any kind):

- NO legal professional is required.
  - NO medical assessment is required.
1. Start with the path/approach based on the adult's current capability—Traditional or RA7.
  2. Check if a legal authority is already in place. For example is there a committee of estate for financial and legal matters?
  3. Determine if there are gaps and what legal document is available on the capability path.

## Can there be different combinations?

Yes. A planning path does not necessarily go in a straight line. Sometimes you have to **mix & match**. Following are some examples:

- An adult may have an EPA and a Will made in the past when they were cognitively capable to understand (the traditional approach), but now the adult has **advanced dementia** and has cognitive difficulties.
  - The adult is considered not capable to make a new EPA or a new Will. Hopefully not needed.
  - Meanwhile the adult has nothing in place for health care or personal care matters. Despite their dementia, the adult may make a RA7H+P to fill the gap.
- In a different situation, an adult may have experienced a **serious stroke** and it is not clear yet if the brain damage is permanent. The adult may have a Will, made before the stroke, but the Will has no meaning if the adult is alive. A Will is only for after death.
  - If nothing is in place for personal planning, the adult makes a RA7ALL.
  - If the adult recovers their cognitive abilities, the adult can revoke (cancel) the RA7ALL and make the RA9 and EPA from the traditional path.
- In the **community living sector**, it is common that many adults with a disability from birth, autism, Fetal Alcohol Spectrum Disorder, and other types of disabilities (special needs), make the RA7ALL when 'turning 19.'
  - In some cases, particularly for older adults in this sector, there may be a legal authority already in place for financial and legal matters (the Public Guardian and Trustee or a parent may be committee of estate for the adult). In this situation, the adult makes a RA7H+P to match up with the committee of estate.

## Why are there different types of Representation Agreements?

You may hear RA7 and RA9 to describe two types of RAs. This shorthand is used for simplicity.

The authorities a representative may have are listed in section 7 and section 9 of the RA Act. A RA7 and RA9 are separate legal documents.

The capability requirements to make a RA9 are different from making a RA7. Some adults will NOT qualify to make the RA9; they may make a RA7.

## Who qualifies to make the RA7?

The **RA7 approach to capability** is different from the traditional approach. The RA7 approach is based on an inclusive definition of capability. The RA7 was designed for adults who have cognitive difficulties to understand. If a doctor or psychiatrist says the adult is incapable—this refers to being cognitively incapable to make an EPA or RA9. It does not prevent the adult from making any type of RA7. Click to read the [fact sheet on RA7](#).

## What are the authorities listed in section 7?

There are 4 **authorities** in section 7 of the RA Act:

- Minor and major health care matters.
- Personal care matters.
- Obtaining legal services and instructing counsel...
- Routine management of finances ([routine finances](#) is defined in the law).

## Who qualifies to make a RA9?

To make a RA9, the adult must independently understand what the RA9 covers and the consequences of making it. Read [RA9 fact sheet](#).

Some adults do not qualify to make the RA9. They will make the RA7ALL or the RA7H+P.

## What are the authorities listed in section 9?

A RA9 includes the health and personal care authorities from section 7 and a few more.

For example, a RA9 can authorize the representative to make decisions about the care and education of the adult's minor children (minor is under age 19). To give this authority to a representative it must be a specific statement in the RA9.

## Does a RA automatically end or expire?

Any type of RA automatically ends when the adult, who it belongs to, dies. The RA may also end if the adult signs a Notice of Revocation.

A RA7 or RA9 does not expire after a certain time (unless this wording is in the RA).

It is a good idea to review the RA (maybe once a year). For example, review if the adult is still comfortable with those named in the RA and if those named are still able to be involved?

### If I am cognitively capable to make the RA9, do I also need to make the RA7?

No. If you currently qualify for the traditional approach, make the legal planning documents on that path—like the RA9. You would NOT also make documents on the RA7 path. The RA9 can be used later if you have cognitive difficulties.

### What if the adult has cognitive difficulties and does not have a Will?

No one can make or change a Will on another's behalf.

Some adults will make a RA7 but not be capable to make a Will. The law for making a Will does not have an inclusive definition of capability like the RA7.

The Nidus Resource Centre provides information about how an estate is settled and who can inherit if the deceased [dies with no Will](#).

## NEW CONCEPTS AND BC RA ACT

The RA Act introduced new concepts such as:

- Personal planning (see page 1);
- Self-determination;
- Supported decision making as part of a continuum.

These ideas have influenced policies and practices across Canada and other countries.

The BC RA Act inspired the United Nations Convention on the Rights of Persons with Disabilities.

### Self-determination Over Best Interests

The first legal duty of a representative is to follow the adult's wishes and values. Traditionally, the primary duty was only on 'best interests'—what someone else thinks is best for the adult.

#### Self-determination view of adults:

- People are capable; even if needing a lot of help.
- People have a right to make their own decisions. 'Nothing about me, without me!'
- The key is 'listening' to the adult's communication. Some adults communicate through behaviours.
- It is human to sometimes make 'bad decisions' (Just look at the divorce rate...)

#### Best interest view is paternalistic:

- People don't know what is good for them.
- We have to protect people from making what we think are or will be bad decisions.
- I know what is best FOR you.

## Supported Decision Making as One Part of a Continuum

The grass-roots (public) used the term interdependent decision making during BC's law reform. Some are now using the term supported decision making.

The concept of interdependent decision making comes from the real life experience of personal supporters who naturally seek out and advocate for the wishes and values of the adult to ensure the adult's voice is at the centre of any decisions during times when the adult needs help speaking up and advocating for themselves.

In the past, systems, laws and policies only recognized substitute decision making. If an adult was considered cognitively incapable to understand, the adult's personal supporters might be consulted but only to act on the adult's behalf and only for what was determined to be in the adult's best interest.

It would be a mistake to design systems, laws and policies only for supported/interdependent decision making. This would lead to further marginalization, not equity and inclusion. In order to navigate real life, both supported and substitute decision making must be included.

Representation Agreements recognize a **dynamic continuum** of decision making—from independent decision making to interdependent decision making to substitute decision making. The continuum is not static. Real life is full of ever-changing events.

### Capability Fluctuates and is Multi-Faceted

Evidence reinforces what we know from personal experience. Capability depends on many factors and can be specific to the individual (like time of day and not only cognitive ability). Traditionally, laws and systems are based on the concept that capability is like a toggle switch—it is off or on. This all or nothing approach is outdated—as we have learned most recently from dementia.

## INFORMATION AND RESOURCES

### Where to find more resources?

Go to [nidus.ca](https://nidus.ca)

*Thanks to Nidus donors for funds to provide free education. You can help! Click [DONATE NOW](#)*

Page 4/4