

RA7 APPROACH TO CAPABILITY – FOR ADULTS WITH COGNITIVE DIFFICULTIES

Due to a grass roots law reform effort, adults with cognitive difficulties can be pro-active and authorize someone to help them with decision-making.

An inclusive definition of capability was put into law for making a Representation Agreement with authorities/powers from section 7 of the BC Representation Agreement Act (RA Act). Many people use the shorthand term RA7.

The RA Act came into effect in February 2000. RA7s are important for adults who have cognitive difficulties. Other legal planning documents take a traditional (cognitive) approach to capability, and this is a barrier for some adults. This mostly affects adults with a disability from birth or childhood as well as adults with advanced dementia, serious stroke or other condition.

Before the RA Act, adults with cognitive difficulties were vulnerable to authority being imposed on them by Adult Guardianship (called Committeeship in BC). Under Adult Guardianship/ Committeeship, adults lose their rights and become a non-person. In BC, Committeeship is the LAST resort because it is so intrusive. The RA7 is a legal alternative to Committeeship.

WHAT IS THE RA7 APPROACH TO CAPABILITY? *(Italics are comments from the Nidus Resource Centre)*

The definition of capability for making a **Representation Agreement with some or all authorities from section 7** is outlined in **section 8** of the RA Act. It says, an adult may make a RA7 **even though** the adult is **incapable of**:

- Making a contract (*understanding nature and effect of the document*);
- Managing his or her health care, personal care or legal matters; or
- The routine management of his or her financial affairs.

In deciding if an adult is incapable of making/changing/revoking a RA7, all **relevant** factors must be considered, for **example** (*these are not criteria, these are examples*):

- Whether the adult communicates a desire to have a representative;
- Whether the adult demonstrates choices and preferences and can express feelings of approval or disapproval of others;
- Whether the adult is aware of the effect of making/ changing/revoking a RA7;
- Whether the adult has a relationship with the representative that is characterized by trust.

Other sections of the RA Act help reinforce this new view of capability:

- Section 2 says that one of the **purposes of the RA Act** is to provide a mechanism to allow adults to **avoid guardianship**.
- Section 3 says:
 - **Every adult is presumed capable** of making/ changing/revoking a representation agreement and of making decisions, until the contrary is demonstrated. (*For example, can someone prove the relationship between the adult and representative is not characterized by trust?*)
 - **An adult's way of communicating** with others is not grounds for deciding that he or she is incapable. (*Some people communicate through their behaviour.*) [Click to read this resource for ideas - Expressing My Preferences](#)

The RA7 is not a type of guardianship. Representatives (and others) need to learn about new ways of thinking and talking about capability.