

Representation Agreements 101: The Essentials

WORDS | AUDREY JUN, LL.B., TEP, & JOANNE TAYLOR, MA

Although a growing number of people are familiar with the term *Representation Agreement (RA)*, there continues to be confusion about: the different types of RAs, who can make one, and what they are used for. This article will give you information about these important legal documents, so that you can put this knowledge to use in your own work.

TWO OVERARCHING TYPES OF REPRESENTATION AGREEMENTS

There are two overarching types of RAs: Section 7 RAs and Section 9 RAs. The terminology comes from the sections of the BC *Representation Agreement Act* that set out what can be authorized in these respective documents. We will refer to them as RA7 and RA9 throughout this article.

Both RA7s and RA9s are legal documents in which an adult in BC (19 years or older), can name a representative. There can be more than one representative, but this requires special wording. The key differences between the RA7 and RA9 lies in the required mental capability of the adult and the types of authorities they can give the representative(s).

RA9 VS. RA7 AUTHORITIES – WHAT POWERS CAN YOU GIVE REPRESENTATIVE(S)?

The RA9 is the most comprehensive document for *health care and personal care matters*. It is for adults who want to plan for the future in case their capability to understand comes into question. The RA9 includes many of the same health and personal care authorities as the RA7 and some additional ones.

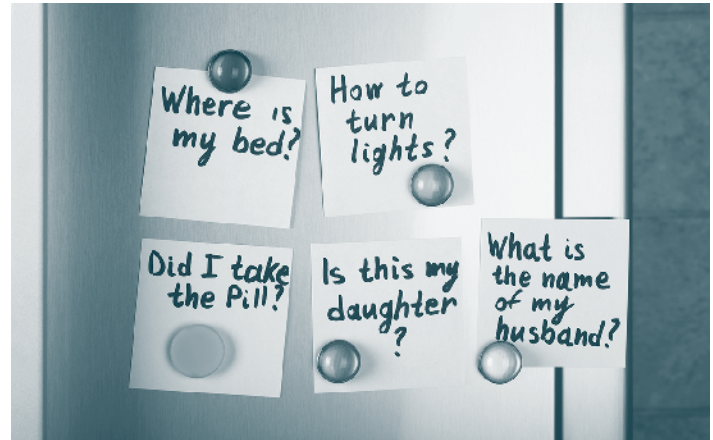
- Examples of *health care* decisions include: immunizations, surgery, chemotherapy, dental care, and hearing care. In addition, refusing life supporting health care is an authority that can be included in an RA9.
- Examples of *personal care* decisions include: decisions about where the adult lives and with whom, e.g., in supported living or home share; participation in the Ministry of Health’s Choices in Supports for Independent Living Program (CSIL) and Community Living BC’s Direct Funding Program. In addition, it includes consent about admission to a long-term care facility if the adult is not capable of consent.

In BC, the RA9 is a common companion to the Enduring Power of Attorney (EPA), which authorizes individuals called “attorneys” to act for the adult in the areas of *financial and legal matters*, and to continue to act beyond the incapacity of the adult who made the EPA.

Many adults, if considered capable of doing so, will opt for a combination package of an EPA and an RA9 in order to plan for future incapacity.

With an RA7, an adult can name representative(s) to help them make decisions, or make decisions on their behalf, for:

- *personal care,*
- *routine financial affairs,*
- *minor or major health care, and*
- *legal services.*



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If an adult is not considered capable of making an RA9, they will likely not be considered to be capable of making an EPA. Therefore, the RA7 can be very useful. It is important to note that the RA7 has some limitations in comparison to the EPA & RA9 combination – for example, an RA7 cannot be used to deal with real estate (like the EPA can), or to refuse life supporting health care (like the RA9).

However, an RA7 can be used for paying bills, for making decisions about medications, immunizations, dental care, decisions about living arrangements, accessing the federal Registered Disability Savings Program (RDSP) program, communicating with Canada Revenue Agency (CRA), obtaining legal services, and more. The first duty of a representative is to help the adult be heard. Too often people with disabilities are shut out of participating in decisions that affect them.

RA9 VS. RA7 CAPABILITY – WHO CAN MAKE WHICH DOCUMENT?

In BC, all adults are presumed to be capable of making decisions about their own personal care, health care, and financial affairs until the contrary is demonstrated. An adult's way of communicating with others is not grounds for deciding that they are incapable of making these types of decisions.

Whether an adult can make an RA9 is based on a traditional view of capability. The law requires the adult to be capable of understanding the nature and consequences of the RA9 at the time they are making it.

However, sometimes an adult's mental capability to understand the nature and consequences of the document is in question at the time they need to make it. This could be due to disability, illness, or injury, whether from birth, or developed in adulthood. The RA7 is what sets BC apart as a leader in what is being touted around the world as "supported decision making".

The innovative aspect of the RA7 is that it looks to a broader, more inclusive and modern conceptualization of capacity. When considering if an adult is capable of making a RA7, a variety of factors may be considered, including whether the adult has a relationship with the representative that is characterized by trust.

The RA7 has enabled adults with FASD, autism, and other disabilities to name personal supporters (e.g. parents, siblings, friends), in order to have access to assistance from a legal representative while exercising their rights and responsibilities as adult members of civil society. For some, the RA7 may be part of the transition to adulthood at age 19.

The RA7 is a legal alternative to the committee process, which would strip the adult of their decision-making rights, likely for the remainder of the adult's life, and is contrary to the principles of self-determination, inclusion, and access to justice. There are community living groups, lawyers, and disability groups who seek to implement similar legislation in Ontario to the BC Representation Agreement Act; they recognize that the lack of innovative legal tools like the RA7 means additional barriers for many adults with disabilities to access resources such as the federal Registered Disability Savings Plan (RDSP).

In addition to the disability community, the RA7 has become increasingly important for seniors in long-term care facilities. Like many jurisdictions, BC has a rapidly aging population and seniors may not have planned ahead for mental incapability, for example, due to the progression of dementia.

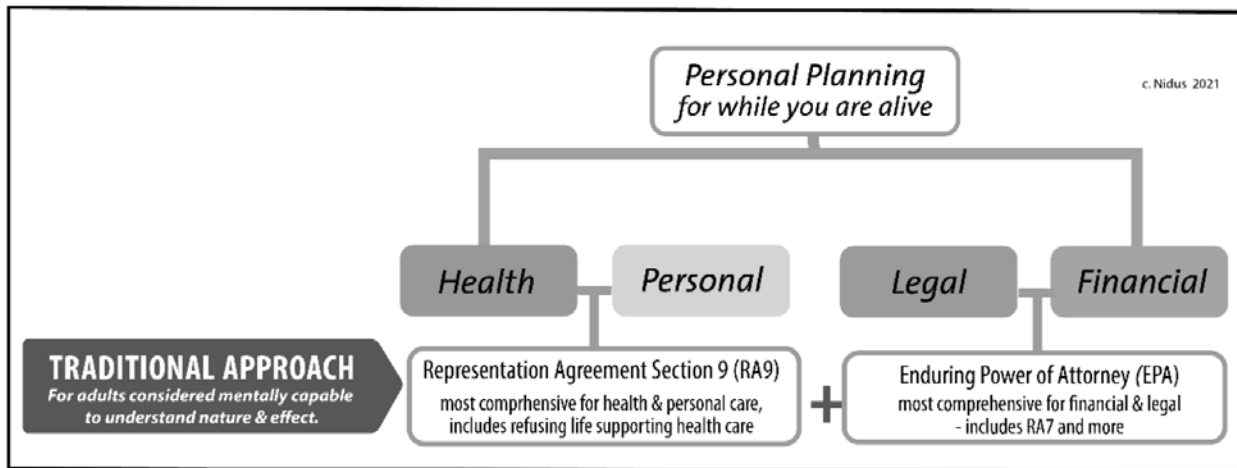
EXAMPLE SITUATION

Jodie, an 81-year-old woman, made an EPA appointing both of her adult daughters as attorneys five years ago, when she was looking down the road to a time she might need help with managing her bank accounts and investments. However, Jodie recently had a stroke and her mental capacity to understand the nature and consequences of making these legal documents is in question. As she made an EPA and it will "endure" beyond her incapacity, Jodie's daughters can use it to help her with her financial and legal matters. Unfortunately, Jodie never made an RA9 and therefore does not have a legal document authorizing someone to help her with health care and personal care decisions.

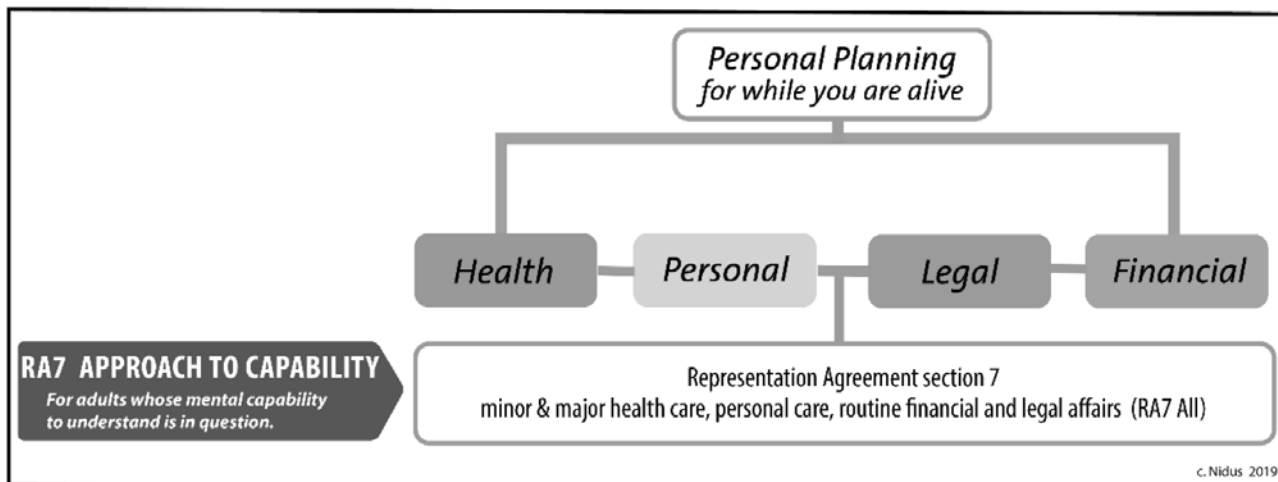
Jodie's daughters do not see the need for Jodie to make an RA7 that includes "all" four authorities, as her still-valid EPA covers more financial and legal matters than an RA7 would. Rather, Jodie could benefit from making an RA7 that includes only minor and major health care, as well as personal care matters. Nidus refers to this type of form as an "RA7H+P" – a free fillable RA7H+P form is available on the Nidus website for adults in Jodie's situation.

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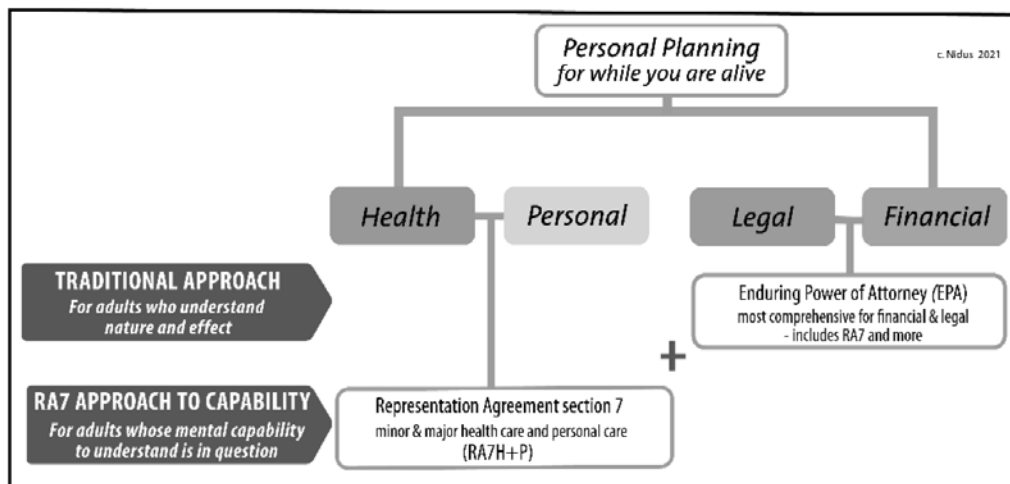
The majority of British Columbians will make an RA9 and an EPA.



Adults who are not capable to understand may make an RA7 with all four authorities.



There are some scenarios where someone may need a different combination of documents.



WHY NIDUS?

Nidus (nidus.ca) is a non-profit, charitable organization that was established in 1995 by community groups involved in adult guardianship legislative reform. Nidus is a hub for expertise on Representation Agreements and related legal topics.

Nidus' free RA forms provide additional flexibility to the forms found in the *My Voice* advance care planning guide; for example, if an alternate representative is named, the wording in Nidus forms recognizes temporary absences of a representative (e.g., due to travel or temporary illness) as well as permanent events (e.g. death or resignation of a representative). There are also different versions of the RA7 available if the adult has other legal authorities already in place, as in Jodie's situation above.

Nidus built expertise around applying the law to real life situations and using Representation Agreements in practice. Nidus provides detailed resources on topics such as: revoking (cancelling) a Representation Agreement; what an Enduring Power of Attorney is, Committeeship and Adult Guardianship, health care consent, and more.

Nidus operates an online Registry, where people can securely register/store information and a copy of their legal documents (i.e., Representation Agreement, Enduring Power of Attorney, Advance Directive, Will, etc.) and other documents. The Nidus Registry helps with communication, access, and centralization of critical information—helpful in case of health crisis or for emergencies, where important documents may be lost, such as evacuation during a flood, wildfire or earthquake.

WHAT'S COMING IN 2023? HOW TO STAY UPDATED!

Nidus recently launched videos of community members sharing their stories about acting as a representative, alternate representative, and monitor in an RA7. These videos can be viewed at Nidus' YouTube channel.

Nidus will launch a new website in 2023, as well as an innovative access to justice project. To stay updated, visit nidus.ca and subscribe to *Nidus News*. 

Audrey Jun, LL.B., TEP has been the Director of Programs at Nidus since Oct. 2022. Previously, she was in private practice in estates and trusts law, with a focus on serving families in the disability community. She is a member of the BC Registered Disability Savings Plan (RDSP) Action Group.

Joanne Taylor has an MA (Counselling and Adult Education with a focus in Gerontology). She has been the Executive Director of Nidus since Feb. 2000 and is the Registrar of Nidus Registry service.

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