

# REPRESENTATION AGREEMENT ACT, SECTION 16

## DUTIES OF REPRESENTATIVES

- (1) A representative must
  - (a) act honestly and in good faith,
  - (b) exercise the care, diligence and skill of a reasonably prudent person, and
  - (c) act within the authority given in the representation agreement.
- (2) When helping the adult to make decisions or when making decisions on behalf of the adult, a representative must
  - (a) consult, to the extent reasonable, with the adult to determine his or her current wishes, and
  - (b) comply with those wishes if it is reasonable to do so.
- (2.1) Subsection (2) does not apply if
  - (a) a representative is acting within authority given to the representative under section 9, and
  - (b) the representation agreement provides that in exercising that authority the representative need only comply with any instructions or wishes the adult expressed while capable.
- (3) If subsection (2) applies but the adult's current wishes cannot be determined or it is not reasonable to comply with them, the representative must comply with any instructions or wishes the adult expressed while capable.
- (4) If the adult's instructions or expressed wishes are not known, the representative must act
  - (a) on the basis of the adult's known beliefs and values, or
  - (b) in the adult's best interests, if his or her beliefs and values are not known.
- (5) On application by a representative, the court may exempt the representative from the duty under subsection (3) to comply with any instructions or wishes the adult expressed while he or she was capable.
- (6) Subject to subsection (6.1), a representative may not delegate any authority given to the representative in the representation agreement.
- (6.1) A representative may delegate to a qualified investment specialist, including a mutual fund manager, all or part of the representative's authority with respect to investment matters.**
- (7) If a representative makes health care decisions on behalf of an adult and the representative must, under subsection (4)(b) of this section, act in the adult's best interests, [see above—adult's wishes and values are unknown] section 19 (3) of the Health Care (Consent) and Care Facility (Admission) Act applies.

*[Sec. 19 (3) of the HCC&CF Act says: "When deciding whether it is in the adult's best interests to give, refuse or revoke substitute consent, [you] must consider: (a) the adult's current wishes, and known beliefs and values, (b) whether the adult's condition or well-being is likely to be improved by the proposed health care, (c) whether the adult's condition or well-being is likely to improve without the proposed health care, (d) whether the benefit the adult is expected to obtain from the proposed healthcare is greater than the risk of harm, and (e) whether a less restrictive or less intrusive form of health care would be as beneficial as the proposed health care."]*
- (8) A representative must
  - (a) **keep accounts and other records** concerning the exercise of the representative's authority under the representation agreement, and
  - (b) **produce the accounts and other records for inspection** and copying at the request of any or all of the following:
    - (i) the adult;
    - (ii) the adult's monitor;
    - (iii) the Public Guardian and Trustee.
- (9) A representative who is authorized to do anything referred to in section 7 (1) (b) [routine management of the adult's financial affairs] must keep the adult's assets separate from the representative's assets.**
- (10) Unless the representation agreement provides otherwise, subsection (9) does not apply to assets that**
  - (a) **are owned by the adult and the representative as joint tenants, or**
  - (b) **have been substituted for, or derived from, assets that were owned by the adult and the representative as joint tenants.**
- (11) [Not in force. Repealed 2006-33-2.]
- (12) A person who, on the death of an adult, will be or might be a beneficiary of the adult's estate does not, for that reason, have a conflict of interest with the adult.

*(All legal duties listed above are important. The sub-sections in **semibold** are highlighted for the benefit of a representative who acts on the authority for routine management of financial affairs from section 7 of the BC Representation Agreement Act.)*